

# EXHIBIT A

# 7065

B10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT <u>Eastern</u> DISTRICT OF <u>Virginia</u>		<b>PROOF OF CLAIM</b>
Name of Debtor: <u>Circuit City Stores, Inc.</u>		Case Number: <u>08-35653</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>Chase Bank USA, N.A.</u>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: <u>Chase Bank USA, N.A., c/o Stephen J. Newman, Stroock &amp; Stroock &amp; Lavan LLP, 2029 Century Park East, 16th Floor</u> <u>Los Angeles, CA 90067</u> Telephone number: <u>310/556-5800</u>		Court Claim Number: (if known)  Filed on: _____
Name and address where payment should be sent (if different from above):  Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: <u>\$ Unliquidated</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  Amount entitled to priority: \$ _____
2. Basis for Claim: <u>See Attached</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____ Annual Interest Rate: %  Amount of arrearage and other charges as of time case filed included in secured claim,  If any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: <u>1/28/09</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>Stephen J. Newman</u>  *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

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JAN 28 2009

KUDZMAN CARLSON CONSULTANTS



**ATTACHMENT TO PROOF OF CLAIM OF CHASE BANK USA, N.A.**

**THE CLAIMS**

1. The debtor, Circuit City Stores, Inc. ("Debtor") is indebted to Chase Bank USA, N.A. ("Chase") for defense and indemnity ("Claims") in regard to the claims and causes of action as set forth in the complaint filed on June 26, 2006 in the Superior Court of the State of California for the County of Los Angeles, Central District, in Davis v. Chase Bank USA, N.A., et al., Case No. BC354564 ("Underlying Complaint"), and removed on August 1, 2006 to United States District Court for the Central District of California, Case No. CV06-4804 DDP (PJWx) ("California Court"). True and correct copies of the Underlying Complaint and the Notice of Removal are attached hereto as Exhibits 1 and 2 and incorporated in full by reference in this proof of claim ("Proof of Claim").

2. The Underlying Complaint centers on the Debtor and its advertising to its customers. The specific advertising challenged in the Underlying Complaint was produced by Debtor and not by Chase. (Underlying Complaint, Exhibit A.) Both the Underlying Complaint and the California Court have stated that Debtor's advertising is at the core of this litigation – the issue being whether Debtor's advertising was misleading and deceptive. For this reason, Chase has valid claims for defense and indemnity against Debtor, the value of which depends on the outcome of proceedings in the California Court. Debtor acknowledges Chase's indemnity claim, as reflected on Debtor's Schedule F filed on docket entry number 1130, page 149 of this bankruptcy.

3. Although Chase currently is precluded from pursuing the Claims due to Debtor's bankruptcy filing and the automatic stay provisions of 11 U.S.C. Section 362(a), Chase reserves all rights including, without limitation, rights pertaining to the Underlying Complaint.

RESERVATION OF RIGHTS TO AMEND AND/OR

TO SUPPLEMENT THIS PROOF OF CLAIM

4. Chase reserves the right to amend and/or supplement this Proof of Claim and to set forth in additional detail the basis and nature of the Claims, to assert pre- and post-petition claims held by Chase other than those set forth herein. Chase further reserves the right to assert a claim for payment under 11 U.S.C. Section 503(b).

# Exhibit 1

90232

Complex

1 Drew E. Pomerance, Esq. (SBN. 101239)  
Michael G. Kline, Esq. (SBN 212758)  
2 Erin M. LaBrache, Esq. (SBN. 195655)  
ROXBOROUGH, POMERANCE & NYE LLP  
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5

**FILED**  
LOS ANGELES SUPERIOR COURT

JUN 26 2006

JOHN A. CLARKE, CLERK

ST. ELIZABETH MEDICAL CENTER, DEPT. 11  
DO NOT WRITE IN THESE SPACES

6 Attorneys for Plaintiff GARY DAVIS,  
individually and on behalf of himself, and  
7 as Private Attorney General and on behalf of  
all others similarly situated

Case assigned  
to Judge

D-324 Victoria Chaney

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

UNLIMITED JURISDICTION

D-324

12 GARY DAVIS, an individual; on behalf of  
13 himself, and as PRIVATE ATTORNEY  
14 GENERAL, and on behalf of all others  
similarly situated,

Plaintiff,

v.

17 CHASE BANK U.S.A., N.A., a Delaware  
corporation; CIRCUIT CITY STORES, INC.,  
18 a Virginia corporation, and DOES 1 through  
50, inclusive,

Defendants.

Case No. 80354564

CLASS ACTION COMPLAINT FOR:

- (1) Violation of the Consumers Legal Remedies Act;
- (2) Violation of the California Business and Professions Code Section 17200 et seq.: Unlawful and Unfair Business Practices;
- (3) Violation of Business & Professions Code §17500 (False Advertising);
- (4) Fraud and Deceit;
- (5) Breach of Contract;
- (6) Breach of the Implied Covenant of Good Faith and Fair Dealing;
- (7) Unjust Enrichment.

22 Plaintiff Gary Davis, on behalf of himself, and all others similarly situated, for his complaint  
23 CHASE BANK U.S.A., N.A. ("Chase Bank") and CIRCUIT CITY STORES, INC. ("Circuit City"),  
24 complains and alleges as follows:

25 //  
26 //  
27 //  
28 //

08/26/06

FILED: 08/26/06 03:58:22 PM  
RECEIVED: 08/26/06 03:58:22 PM  
CASH: 320.00  
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INTRODUCTION

1. This case arises from Chase Bank's fraudulent and unfair business practice of charging its California credit card holders finance charges in connection with purchases at Circuit City advertised as "no interest, no payment," "no interest with minimum monthly payment," or "interest and payment free" (collectively "Promotional Purchase"). Plaintiff, on behalf of himself and all individuals similarly situated, seeks damages and equitable relief for violations of the California Consumers Legal Remedies Act, the *California Business and Professions Code* (Unfair Business Practices and False Advertising), for fraud and deceit, and for breach of contract and breach of the covenant of good faith and fair dealing. Chase Bank's and Circuit City's fraudulent and unfair business practices violate the rights of unsuspecting California consumers throughout the state, for which California consumer protection laws were designed.

THE PARTIES

2. Plaintiff, Gary Davis ("Plaintiff") is now, and at all relevant times was, a resident of the County of Los Angeles, State of California.

3. At all relevant times, the class of Plaintiffs on behalf of which Plaintiff is bringing this suit, were residents of the State of California. Such persons shall hereinafter be referred to as the "Class" or "Class Members."

4. Plaintiff is informed and believes, and based thereon alleges that Defendant Chase Bank is a corporation, organized and existing under the laws of the State of Delaware, duly qualified as a foreign corporation to transact business in the State of California, and doing business throughout the State of California. Plaintiff is informed and believes, and based thereon alleges, that Defendant Chase Bank is presently and/or has engaged in business in the County of Los Angeles, State of California.

5. Plaintiff is informed and believes, and based thereon alleges that Defendant Circuit City is a Virginia corporation that owns and operates numerous retail stores in the State of California, including multiple locations in Los Angeles County.

1       6.     At all times relevant herein, Defendants Chase Bank and Circuit City offered a credit  
2 card through Circuit City ("Circuit City Rewards Card"). The Circuit City Rewards Card conferred  
3 certain benefits to consumers who utilized the credit card to make their purchases such as earning  
4 reward points redeemable at Circuit City stores. Another benefit of the Circuit City Rewards Card  
5 was access to Defendants' advertised promotion of "no interest, no payment" for a specified period  
6 of time on certain types of Circuit City purchases. ("Promotional Purchases")

7  
8       7.     Plaintiff is informed and believes, and based thereon alleges that at all times herein  
9 mentioned, Defendant Chase Bank, Defendant Circuit City and DOES 1 through 50, inclusive  
10 (hereinafter jointly referred to as "Defendants"), are each responsible in some manner for the  
11 transactions, events and occurrences herein alleged and that damages herein alleged were  
12 proximately caused thereby. Plaintiff is informed and believes, and based thereon alleges that each  
13 of the Doe Defendants was intentionally, negligently, or in some other manner the cause, or  
14 contributing cause of, or otherwise responsible for the events and happenings alleged in this  
15 complaint and for Plaintiff's injuries and damages and those of the Class. Plaintiff will seek leave to  
16 amend this complaint to allege the true names and capacities of each such Doe Defendant, together  
17 with such additional allegations as may be appropriate, when their names, capacities, and the nature  
18 of their involvement have been ascertained.

19       8.     Plaintiff is informed and believes and thereon alleges that at all times herein  
20 mentioned, Defendants, and each of them, were the agents, joint venturers, trustees, servants,  
21 partners, alter-egos, parent corporations, contractors, and/or employees of each of the remaining  
22 Defendants, and that the acts and/or omissions herein alleged were done by them acting individually,  
23 through such capacity or through the scope of their authority, and that such conduct was thereafter  
24 ratified by the remaining Defendants.

25       9.     At all relevant times, Defendants, and each of them, solicited business from residents  
26 and other individuals within the State of California, conducted business with consumers in the State  
27 of California, conducted business with Plaintiff and others similarly situated with him herein, and  
28 solicited business from Plaintiff and others similarly situated with Plaintiff, said business being the



1 subject matter of this complaint.

2 **CLASS ACTION ALLEGATIONS**

3 10. Plaintiff brings this class action, on behalf of himself and all others similarly situated  
4 in California during all or part of the class period, as more fully explained below. The questions of  
5 law or fact common to the class predominate over questions affecting the individual members and,  
6 on balance, a class action is superior to other methods available for adjudicating the controversy.

7 11. The proposed class Plaintiff seeks to represent is presently defined as follows:

8 All persons who, in the past four years, used their Circuit City Rewards Card to

9 (a) make a Promotional Purchase in California;

10 (b) had made the minimum payment, or greater payment on their prior  
11 statement closing balance ("Payment"); and

12 (c) were assessed a finance charge on their prior balance without Chase  
13 having applied that Payment to their prior balance because Chase Bank applied the payment to the  
14 Promotional Purchase rather than to the prior balance.

15 12. There is a well-defined community of interest in the litigation and the proposed class  
16 is easily ascertainable.

17 13. Numerosity: The Plaintiff Class is potentially so numerous that the individual joinder  
18 of all members is impracticable under the circumstances of the case. While the exact number of  
19 class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon  
20 alleges that Defendants' Circuit City Reward Card Promotional Purchase program was a widespread  
21 program marketed and promised to numerous individuals within the customer base of Defendants.

22 14. Common Questions Predominate: Common questions of law and fact exist as to all  
23 class members, and predominate over any questions that affect only individual members of the class.  
24 The common questions of law and fact include, but are not limited to:

25 (a) Whether Defendants have engaged in practices proscribed by the Consumer  
26 Legal Remedies Act, *Civil Code* section 1770, subsection (a)(9), by "advertising goods or  
27 services with intent not to sell them as advertised";

28 (b) Whether Defendants have engaged in practices proscribed by the Consumer

1 Legal Remedies Act, *Civil Code* section 1770, subsection (a)(13), by "making false or  
2 misleading statements of fact concerning reasons for, existence of, or amounts of price  
3 reductions";

4 (c) Whether Defendants have engaged in practices proscribed by the Consumer  
5 Legal Remedies Act, *Civil Code* section 1770, subsection (a)(14), by "representing that a  
6 transaction confers or involves rights, remedies or obligations which it does not have or  
7 involve, or which are prohibited by law";

8 (d) Whether Defendants have engaged in practices proscribed by the Consumer  
9 Legal Remedies Act, *Civil Code* section 1770, subsection (a)(19), by "inserting an  
10 unconscionable provision in the contract";

11 (e) Whether Defendants have violated the Consumer Legal Remedies Act, *Civil*  
12 *Code* section 1750 et seq., by engaging in other and/or additional practices proscribed  
13 therein;

14 (f) Whether Defendants' activities related to its solicitation for consumer  
15 purchases of promotional Circuit City products with the Circuit City Rewards Card,  
16 constitutes false or misleading advertising in violation of *Business and Professions Code*  
17 section 17500;

18 (g) Whether Defendants' conduct is "unlawful," "unfair" or "fraudulent" within  
19 the meaning of California's Unfair Business Practices Act, *Business and Professions Code*  
20 section 17200, et seq.

21 (h) Whether in their uniform, written credit applications and marketing  
22 materials, Defendants have failed to disclose material terms of Defendants' Promotional  
23 Purchase offer;

24 (i) Whether Defendants made uniform, material false representations to the effect  
25 that consumers would not be charged interest on Promotional Purchases.

26 15. Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff  
27 Class. Due to Defendants' common course of conduct, Plaintiff and all members of the Plaintiff  
28 Class have been unwittingly forced to pay off the Promotional Purchases prior to the expiration of

1 the advertised grace period for such payments and have been assessed a finance charge or charges in  
2 connection with a Circuit City purchase advertised as "interest and payment free" if made with their  
3 Circuit City Rewards Card.

4 16. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of  
5 Plaintiff Class. Plaintiff resides in California and has been charged finance fees in connection with  
6 one or more Promotional Purchases. Plaintiff has retained counsel who have substantial experience  
7 in complex civil litigation and class actions.

8 17. Superiority: The class action is superior to other available means for the fair and  
9 efficient adjudication of the claims of Plaintiff. The damages suffered by each individual Class  
10 Member may be limited. Damages of such magnitude are small given the burden and expense of  
11 individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct.  
12 Further, it would be virtually impossible for the members of the Class individually to redress  
13 effectively the wrongs done to them. Even if the Class Members themselves could afford such  
14 individual litigation, the court system could not. Individualized litigation presents a potential for  
15 inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to  
16 all parties and the court system presented by the complex legal and factual issues of the case. By  
17 contrast, the class action device presents far fewer management difficulties, and provides the  
18 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.  
19 Certification is also appropriate given the anticipated need to create a fluid recovery fund.

20 18. Plaintiff is unaware of any particular difficulties that are likely to be encountered in  
21 the management of this action that would preclude its maintenance as a class action.

22 **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

23 19. Defendants solicited Plaintiff and others similarly situated to make purchases at  
24 Circuit City using Defendants' Circuit City Rewards Card and in exchange for using its services,  
25 Plaintiff and others similarly situated were eligible to receive an interest and payment free period in  
26 which to pay off the balance on certain purchases described herein as "Promotional Purchases."

27 20. From time to time, Defendants advertise Promotional Purchases in the Circuit City  
28 Stores, Circuit City Rewards Card applications, mailers, and newspapers, among other advertising

1 means. The Promotional Purchase advertisements offer "no interest, no payments" for a variable  
2 period based on the amount of the purchase. For example, a Circuit City Rewards Card promotional  
3 item offered to consumers in 2006, states in large writing: "No interest! No payments! For six  
4 months when you spend \$499 or more. For 90 days when you spend \$299 or more." "It is easy to  
5 take advantage of this offer! When you make a purchase with your Circuit City credit card, present  
6 this certificate to the store associate to scan." (A true and correct copy of this Circuit City Rewards  
7 Card promotional material is attached hereto as Exhibit A).

8 21. Plaintiff is informed and believes and thereon alleges that this promotional material  
9 as well as variations of this promotional material, advertising "no interest, no payment" for a  
10 specified period of time, was provided or made available, from time to time, to each of the Class  
11 Members.

12 22. On March 3, 2006, Plaintiff purchased a television set from Circuit City, charging  
13 \$2,000 to his Chase Circuit City Rewards Card. Although Plaintiff did not request that this item be  
14 treated as a Promotional Purchase, Defendants nevertheless automatically treated this item as a  
15 Promotional Purchase, with the term of no interest with minimal payment until January 2008.

16 23. Prior to the purchase of the subject television, Defendant Chase Bank billed Plaintiff  
17 for purchases made between January 14, 2006, and February 13, 2006 ("February Statement"), on  
18 his Circuit City Rewards Card. Payment was due by March 10, 2006, and if Payment was posted by  
19 March 10, 2006, no finance charge should be applied because the balance would have been paid in  
20 full. Alternatively, if partial Payment was made either of the minimum amount or a greater amount,  
21 then a finance charge should be applied only against the remaining balance after subtracting the  
22 Payment made. Plaintiff returned two items and made two on-line payments consisting of the total  
23 amount owing on March 4, 2006, and March 6, 2006, thereby paying the February Statement  
24 balance in full and on time.

25 24. Based on the language appearing in each of his monthly statements, Plaintiff was  
26 informed and believed that he would not be assessed a finance charge if his monthly billings were  
27 paid in full, or that any finance charge would be based only on the remaining balance after any  
28 partial Payment had been subtracted from the outstanding balance. Each billing statement received

1 by Plaintiff states: "[W]e do not charge periodic finance charges on new purchases billed during the  
2 billing cycle if we receive payment of your New Balance by the date and time your payment is due  
3 as shown on your billing statement and we received payment of your New Balance on your previous  
4 billing statement by the date and time your payment was due as shown on that billing statement."  
5 (A true and correct copy of the February Statement is attached hereto as Exhibit B).

6 25. Sometime after March 13, 2006, Plaintiff received his monthly statement from  
7 Defendant Chase Bank for purchases made between February 14, 2006, and March 13, 2006  
8 ("March Statement"). Although plaintiff had paid the February Statement balance in full and in a  
9 timely manner, Defendant Chase Bank assessed a \$77.25 finance charge which appeared on the  
10 March Statement. (A true and correct copy of the March Statement is attached hereto as Exhibit C).

11 26. Plaintiff is informed and believes, and based thereon alleges that he was assessed the  
12 \$77.25 finance charge because his entire February Statement Payment was applied against the  
13 \$2,000 Promotional Purchase, payment for which was not due, instead of to the February Statement  
14 balance, thereby leaving a balance due against which finance charges were charged. The \$2,000  
15 charge for the television was made subsequent to the issuance of the February Statement, and no  
16 Payments of any kind were due and owing for the Promotional Purchase until January 2008.  
17 Nevertheless, Chase Bank allocated the entire \$1,736.91 that Plaintiff paid on his February  
18 Statement to the March 3, 2006, Promotional Purchase, even though, as advertised, no amounts were  
19 due and owing on that item.

20 27. Chase Bank assessed similar finance charges against Plaintiff on at least two (2) other  
21 prior occasions involving the same type of Promotional Purchase, where payments were not due for  
22 a specified period of time, but Chase Bank nevertheless allocated all of Plaintiff's payments to the  
23 Promotional Purchase. Plaintiff is informed and believes, and based thereon alleges that thousands  
24 of other similarly situated Class Members made similar types of Promotional Purchases at Circuit  
25 City using Defendants' Circuit City Rewards Card, which Defendants treated as Promotional  
26 Purchases subject to terms of "no interest, no payment" for a specified period of time, but were  
27 thereafter charged a finance charge in a manner similar, or identical to that of Plaintiff.

28 28. The "no interest, no payment" promotional offers fail to disclose that all payments

1 made by the consumer on his or her regular monthly statement are given priority of payment to the  
2 promotional item, even if not yet billed and even if not due for many months.

3 29. The promotional offer conveys that the consumer will receive a benefit of a grace  
4 period of anywhere from a few months to two (2) years or more. Plaintiff is informed and believes,  
5 and based thereon alleges, however, that the offer is a scam used to induce consumers into believing  
6 that they will have an extended time period in which to pay off their Promotional Purchases, when in  
7 fact, the consumer has less time to pay off the Promotional Purchases due to Defendants' practice of  
8 allocating consumers' Payments as described herein.

9 30. Plaintiff is informed and believes, and based thereon alleges that Defendant Chase  
10 Bank knows of the terms and conditions of such Promotional Purchases, and that Chase Bank's  
11 practice of prioritizing the allocation of credit card payments to purchases not yet due and owing is  
12 deceptive, misleading, fraudulent, unfair and in violation of California law. Plaintiff further is  
13 informed and believes, and based thereon alleges that Defendant Chase Bank's practice of  
14 prioritizing the allocation of credit card payments to purchases advertised as "interest and payment  
15 free" is especially egregious and violative of California law as this practice directly contradicts the  
16 concept of "interest and payment free."

17 31. Plaintiff, on behalf of himself and all others similarly situated, seeks damages and  
18 equitable relief, including restitution, for violations of the California Consumers Legal Remedies  
19 Act, the *California Business and Professions Code* (Unfair Business Practices and False  
20 Advertising), Fraud and Deceit, and breach of contract and of the covenant of good faith and fair  
21 dealing. On behalf of himself and the proposed Class Members, and to the extent appropriate, on  
22 behalf of the general public of California, Plaintiff seeks, among other things, declaratory relief,  
23 injunctive relief, equitable relief, including restitution and disgorgement, and actual and punitive  
24 damages, and attorney's fees.

25 **FIRST CAUSE OF ACTION**

26 (Violation of the Consumers Legal Remedies Act)

27 (Against All Defendants)

28 32. Plaintiff incorporates by reference paragraphs 1 - 31 above as though fully set forth

1 herein.

2 33. Defendants are "persons" and provide "goods" and "services" within the meaning of  
3 the *Civil Code* sections 1761(c) and 1770.

4 34. Purchasers of Circuit City Promotional Purchases with the Circuit City Rewards  
5 Card, including Plaintiff and Class Members, are "consumers" within the meaning of the *Civil Code*  
6 section 1761(d) and 1770. Plaintiff's and each Class Member's Promotional Purchase with the  
7 Circuit City Rewards Card constitutes a "transaction" within the meaning of *Civil Code* sections  
8 1761(e) and 1770.

9 35. As set forth herein, Defendants' acts, practices, representations, omissions, and  
10 course of conduct with respect to advertising and selling items as interest and payment free violates  
11 section 1770 (a)(9), (13), (14), and (19) of the Consumers Legal Remedies Act in that: (a)  
12 Defendants advertised goods or services with the intent not to sell them as advertised; (b)  
13 Defendants made misleading statements of fact concerning reasons for, existence or amounts of  
14 price reductions; (c) Defendants represented that the transaction conferred or involved rights,  
15 remedies or obligations that it did not have or involve; and (d) Defendants inserted an  
16 unconscionable provision in the contract.

17 36. This action shall constitute notice to Defendants pursuant to *California Civil Code*  
18 section 1782 of the unlawful, unfair and fraudulent business practices as complained herein and  
19 formal demand that Defendants: (1) cease and desist all advertising, promotional and sales activities  
20 and practices described herein; (2) cease the promotion of its "interest and payment free" credit card  
21 through the use of deceptive and misleading advertising devices as described herein; (3) cease the  
22 practice of prioritizing the application of consumers' credit card payments to Promotional  
23 Purchases; and (4) disclose to all consumers' Defendants' deceptive and illegal practices.

24 37. Should Defendants herein fail to comply with the demands as stated above, Plaintiff  
25 shall file a First Amended Complaint seeking an order, pursuant to *California Code of Civil*  
26 *Procedure* section 1780 et seq.: (1) directing Defendants to cease and desist all advertising,  
27 promotional and sales activities and practices described herein; (2) enjoining Defendants from the  
28 promotion of its "interest and payment free" credit card through the use of deceptive and misleading

1 advertising devices as described herein; (3) directing Defendants to disgorge, for the benefit of  
2 Class Members, its profits and compensation emanating from its "interest and payment free"  
3 scheme, and/or make full restitution to Plaintiff and Class Members; and (4) enjoining Defendant  
4 Chase Bank from prioritizing the application of consumers' credit card payments to Promotional  
5 Purchases. Plaintiff's Amended Complaint shall also seek compensatory and punitive damages,  
6 costs of litigation, attorneys' fees and such other relief as is authorized under applicable provisions  
7 of the CLRA.

8 **SECOND CAUSE OF ACTION**

9 (For Violation of the *California Business and Professions Code*

10 *Section 17200 et seq.*: Unlawful and Unfair Business Practices)

11 (Against All Defendants)

12 38. Plaintiff incorporates by reference paragraphs 1 – 37 above as though fully set forth  
13 herein. Plaintiff has suffered injury in fact and has suffered financial loss as a result of Defendants'  
14 conduct as alleged in this cause of action.

15 39. Defendants' acts, conduct and practices as described herein constitute unlawful  
16 business acts and practices within the meaning of *California Business and Professions Code*  
17 sections 17200 et seq.

18 40. Defendants' acts, conduct and practices were unlawful, in that Defendants violated  
19 the Consumers Legal Remedies Act, as alleged herein.

20 41. Defendants' acts, conduct and practices, as described herein, constitute unfair,  
21 fraudulent, and deceptive business acts and practices within the meaning of *California Business and*  
22 *Professions Code* sections 17200 et seq.

23 42. Defendants' acts, conduct and practices, as alleged herein, were unfair, in that any  
24 utility for Defendants' conduct is outweighed by the gravity of the consequences to Plaintiff, Class  
25 Members, and the general public, and/or Defendants' conduct is immoral, unethical, oppressive,  
26 unscrupulous or substantially injurious to Plaintiff, Class Members and the general public.

27 43. Defendants' acts, conduct and practices, as alleged herein, were fraudulent, in that  
28 they were likely to and did deceive Plaintiff, Class Members and the general public, and Defendants



1 engaged in such acts, conduct, and practices knowingly.

2 44. Defendants' unfair, fraudulent, and deceptive business acts and practices are  
3 described herein and include, but are not limited to, the following:

4 (a) Advertising promotional items as interest and payment free when purchased  
5 with a Circuit City Rewards Card when in fact, interest and finance charges were frequently  
6 applied;

7 (b) Charging a finance fee despite Payment of the monthly balance in part or in  
8 full, without deducting the Payment made before assessing any finance charge; and

9 (c) Applying monthly Payments to Promotional Purchases not yet billed or owing  
10 instead of to the balance as billed in the monthly statement due.

11 45. As a direct and proximate result of Defendants' unfair, unlawful and fraudulent  
12 business practices as alleged herein, Defendants were able to: (a) issue more charge cards to Circuit  
13 City customers than they otherwise would have; (b) receive more credit card purchases for Circuit  
14 City products than they otherwise would have; and/or (c) charge more finance charges than they  
15 otherwise would have, and accordingly, Defendants received and are in possession of excessive and  
16 unjust revenues and profits.

17 46. Plaintiff, on behalf of himself and all others similarly situated in California, and  
18 where appropriate, on behalf of the general public of California, seeks an order including, but not  
19 limited to (1) directing Defendants to cease and desist all advertising, promotional and sales  
20 activities and practices described herein; (2) enjoining Defendants from the promotion of their  
21 "interest and payment free" credit card through the use of deceptive and misleading advertising  
22 devices as described herein; (3) directing Defendants to disgorge, for the benefit of Class Members,  
23 their profits and compensation emanating from their "interest and payment free" scheme, and/or  
24 make full restitution to Plaintiff and Class Members; and (4) enjoining Defendant Chase Bank from  
25 prioritizing the application of consumers' credit card payments to Promotional Purchases. Plaintiff  
26 also seeks any other relief the Court deems acceptable, in accordance with section 17203 of the  
27 Business and Professions Code. Plaintiff also seeks costs of litigation, attorneys' fees pursuant to  
28 *California Code of Civil Procedure* §1021.5, and such other relief as the Court deems proper.

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THIRD CAUSE OF ACTION

(False Advertising, Violation of *Business & Profession Code* §17500)

(Against All Defendants)

47. Plaintiff incorporates by reference paragraphs 1 - 46 above as though fully set forth herein.

48. The standardized advertising and written and oral promotional material and all other written and oral promotional efforts undertaken by Defendants constitute advertising services and commercial statements, disseminated by Defendants, which contained statements that are untrue and/or misleading, or which omitted material information, and which are known, or by the exercise of reasonable care should have been known by Defendants to be deceptive, in violation of *California Business and Professions Code* section 17500, et seq. and other similar state false advertising statutes. Plaintiff and Class Members are accordingly entitled to equitable and injunctive relief, on behalf of themselves and all others similarly situated, and request the following equitable and injunctive relief:

(a) That Defendants be ordered to cease and desist all advertising, promotional and sales activities and practices described herein;

(b) That Defendants be enjoined from the promotion of its "interest and payment free" credit card through the use of deceptive and misleading advertising devices as described herein;

(c) That Defendants be ordered to disgorge, for the benefit of Class Members, their profits and compensation emanating from its "interest and payment free" scheme, and/or make full restitution to Plaintiff and Class Members.

(d) That Defendant Chase Bank be enjoined from prioritizing the application of consumers' credit card payments to Promotional Purchases.

06/27/08  
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FOURTH CAUSE OF ACTION

(Fraud and Deceit)

(Against All Defendants)

49. Plaintiff incorporates by reference paragraphs 1 - 48 above as though fully set forth herein.

50. At various times, as set forth in this Complaint, Defendants made material and intentional misrepresentations and false promises to Plaintiff, and others similarly situated while fraudulently concealing other material facts from Plaintiff. The material, fraudulent misrepresentations, false promises, and fraudulent omissions include, but are not limited to, the following:

(a) Uniform, written solicitations to consumers, which solicitations uniformly promised that certain promotional purchases made at Circuit City using the Circuit City Rewards Card in excess of \$250 would receive an interest and payment free period in which to payoff their purchase;

(b) Uniform failure to disclose in Defendants' written solicitations to consumers that Defendant Chase Bank would actually charge a finance charge even when customers paid their prior balance in full, or would otherwise charge a finance charge on any remaining balance without first deducting any partial Payment made;

(c) Failure to clearly and adequately disclose that Chase Bank would allocate Payments to Promotional Purchases, even if no payments were due for many months, thus causing customers who believed they were paying their current balances to actually incur excessive finance charges.

51. While Defendants were making the enumerated, material fraudulent and deceitful misrepresentations and omissions, they knew the true facts to be the opposite thereof.

52. Defendants knew that each of these enumerated, material misrepresentations and omissions were deceitful and fraudulent at the time that they were made, or, at the minimum, made the fraudulent misrepresentations and omissions with a reckless disregard for the true facts.

53. Defendants made its material fraudulent misrepresentation and fraudulently

1 concealed material information for the primary purposes of inducing Plaintiff and others similarly  
2 situated to enter into a Circuit City Promotional Purchase using the Circuit City Rewards Card.  
3 Specifically, Defendants purposefully and fraudulently concealed that Promotional Purchases were  
4 given priority of payment, even if not yet billed and owing, thus making the promise of "interest and  
5 payment free" illusory.

6 54. Plaintiff and other Class Members were unaware of the true facts that were concealed  
7 by Defendants' material fraudulent misrepresentations and omissions, consummated the proposed  
8 Promotional Purchase, having no reason to suspect that the transactions were predicated upon such  
9 material, deceitful and fraudulent misrepresentations and omissions.

10 55. As a direct and proximate result of the events and material, deceitful and fraudulent  
11 misrepresentations described herein, Plaintiff and other Class Members have been damaged as may  
12 be shown according to proof at the time of trial.

13 56. In doing the acts herein alleged, Defendants acted with malice, oppression, and fraud  
14 in order to induce Plaintiff and Class Members into making Circuit City purchases with the Circuit  
15 City Rewards Card pursuant to which Defendants would profit from the collection of undisclosed  
16 fees. Such despicable conduct, in willful and conscious disregard of Plaintiff's rights, justifies an  
17 award of exemplary damages against these Defendants in amounts as may be shown in according to  
18 proof at the time of trial.

19  
20 **FIFTH CAUSE OF ACTION**

21 **(Breach of Contract)**

22 **(Against Defendant Chase Bank and Does 1 - 50)**

23 57. Plaintiff incorporates by reference paragraphs 1 - 56 above as though fully set forth  
24 herein.

25 58. Defendant Chase Bank offered Plaintiff and Class Members a no interest, no payment  
26 grace period on Promotional Purchases made using their Circuit City Rewards Card.

27 59. Plaintiff and Class Members made Promotional Purchases as offered by Defendant  
28 Chase Bank.

1       60. Defendant Chase Bank breached these contracts by prioritizing the allocation of  
2 credit card Payments to purchases offered and accepted as interest and payment free ahead of non-  
3 promotional items appearing on the monthly statement. Defendant Chase Bank further breached  
4 these contracts by charging an interest fee on balances that remained due to this allocation of  
5 Payments.

6       61. By reason of Defendants' breach of Plaintiff's and other Class Members' respective  
7 contracts, Plaintiffs and other Class Members have been damaged in the manner set forth herein, in  
8 an amount to be determined at trial.

9  
10                                   **SIXTH CAUSE OF ACTION**

11                           (Breach of the Implied Covenant of Good Faith and Fair Dealing)

12                           (Against Defendant Chase Bank and Does 1 – 50)

13       62. Plaintiff incorporates by reference paragraphs 1 – 61 above as though fully set forth  
14 herein.

15       63. Every contract imposes upon each party a duty of good faith and fair dealing in its  
16 performance. The Promotional Purchases made by Plaintiff and Class Members with their Circuit  
17 City Rewards Card contained an implied covenant of good faith and fair dealing. The covenant  
18 requires that neither party to the Promotional Purchase agreement do anything to infringe upon the  
19 other party's rights to the benefits of the agreement.

20       64. Defendant Chase Bank's conduct, as set forth herein, has breached each of the  
21 implied covenants of good faith and fair dealing.

22       65. For example, Defendant Chase Bank has materially breached the implied covenant of  
23 good faith and fair dealing by:

24                   (a) Promising purchasers of Circuit City Promotional Purchases they would  
25 receive a payment free period in which to payoff their purchase, when, in fact, Defendant  
26 Chase Bank prioritized the allocation of Payments to Promotional Purchases;

27                   (b) Promising purchasers of Circuit City Promotional Purchases they would  
28 receive an interest free period in which to payoff their purchase, when, in fact, Defendant

1 Chase Bank charged interest fees in connection with Promotional Purchases.

2 66. As a direct result of material breaches of the implied covenant of good faith and fair  
3 dealing by Defendants, as set forth herein, Plaintiffs have been damaged as may be shown according  
4 to proof at the time of trial.

5  
6 **SEVENTH CAUSE OF ACTION**

7 (For Unjust Enrichment)

8 (Against Defendant Chase Bank and Does 1- 50)

9 67. Plaintiff incorporates by reference paragraphs 1 - 66 above as though fully set forth  
10 herein.

11 68. As set forth fully herein, Defendants were not and are not entitled to a finance fee in  
12 connection with Promotional Purchases.

13 69. Thus, Defendants have retained and continue to retain money belonging to Plaintiff  
14 and the Class Members.

15 70. If Defendants are permitted to retain this money, they will be unjustly enriched at the  
16 Plaintiffs' expense.

17  
18 **WHEREFORE**, Plaintiff, on Plaintiff's own behalf and on behalf of the Class Members,  
19 prays for judgment as follows:

20 1. For an order certifying the Plaintiff Class and appointing Plaintiff and his counsel to  
21 represent the Class;

22 2. For an order awarding compensatory damages in an amount which may be proven at  
23 trial, together with interest thereon;

24 3. For an order awarding restitution and/or disgorgement and other equitable relief as  
25 the Court deems proper;

26 4. For an order awarding exemplary damages in an amount to deter and punish;

27 5. For an order awarding pre-judgment and post-judgment interest, as well as their  
28 reasonable attorneys' and experts' witness fees and other costs;

1 reasonable attorneys' and experts' witness fees and other costs;

2 6. For an order enjoining Defendants from continuing to engage in unfair business  
3 practices and false advertising; and,

4 7. For an order awarding such other and further relief as this Court may deem just and  
5 proper.

6  
7 DATED: June 26, 2006

ROXBOROUGH, POMERANCE & NYE LLP

8  
9 By: 

DREW E. POMERANCE

MICHAEL G. KLINE

ERIN M. LaBRACHE

Attorneys for Plaintiff GARY DAVIS,  
individually and on behalf of himself, and  
as Private Attorney General and on behalf of  
all others similarly situated

# Exhibit A



# No Interest! No Payments!

**For 6 Months  
When You  
Spend  
\$499  
or more\***



**For 90 Days  
When You  
Spend  
\$299  
or more\***

\* See reverse side for details.

Store Associate: Please scan this  
barcode for the 90 Day/\$299 offer



50YCRFINANCE03M

## It's easy to take advantage of this offer!

When you make a purchase  
with your Circuit City credit card,  
present this certificate  
to the store associate to scan.

\* Offers apply to in-store purchases charged to your Circuit City credit card account and are subject to credit approval. For any item \$499 and above, to avoid finance charges, the purchase price must be paid in full within 180 days of the purchase date or on the 181st day from the purchase date. Finance charges will be assessed at the Deferred/Accumulated Finance Charge APR from the date of purchase. For any item \$299 and above, to avoid finance charges, the purchase price must be paid in full within 90 days of the purchase date or on the 91st day from the purchase date. Finance charges will be assessed at the Deferred/Accumulated Finance Charge APR from the date of purchase. Minimum monthly payments are required on your other account balances. As of August 1, 2008 the following rates and terms apply for in-store applicants and are subject to change. For new Circuit City Rewards Card accounts: The purchase APR is 22.24% or 24%, the Deferred/Accumulated Finance Charge APR is 22.74% or 24% and the default and closed account APR is 24.1% or 25.3%, depending on your credit qualifications. Late Payment & Returned check fee: \$35. Minimum Finance Charge, if any assessed: \$1.00. Offer expires 3/30/09. Existing cardholders should see their cardmember agreement for applicable interest rates and charges. The Circuit City Rewards Card is issued by Chase Bank USA, N.A.

50YCRFINANCE03M



Store Associate: Please scan this  
barcode for the 6 Month/\$499 offer

EXH A



Statement

41041400149340390000110000002752685

CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9244

ACCOUNT # 4104 1400 1493 4039  
NEW BALANCE \$2,752.68  
PAYMENT DUE DATE 03/10/08  
MINIMUM PAYMENT DUE \$110.00

CHASE CARDMEMBER SERVICE  
PO BOX 94010  
PALATINE, IL 60094-4010

MAIL  
CHECK  
TO:

MAKE CHECKS PAYABLE TO CHASE

\$          
AMOUNT ENCLOSED

GARY J DAVIS  
3126 ROBERTS AVE  
CULVER CITY CA 90232-7415

M0117867

PLEASE INDICATE ANY CHANGE TO ADDRESS OR TELEPHONE BELOW OR VISIT WWW.CIRCUITCITYREWARDS.COM  
Street Address \_\_\_\_\_ Home Telephone \_\_\_\_\_  
City/State/Zip \_\_\_\_\_ Business Telephone \_\_\_\_\_ E-Address Here \_\_\_\_\_

NCE SUMMARY

us Balance \$1,496.99  
payments and Credits \$1,781.13  
ash Advances \$0.00  
urchases/Adjustments \$2,955.45  
NANCE CHARGES \$82.37  
ow Balance \$2,752.68

ACCOUNT INFORMATION

Statement Closing Date 02/13/08  
Days in Billing Cycle 31  
New Balance \$2,752.68  
Credit Line \$8,000.00  
Available Credit \$3,247.32  
Available Cash Advance\*\* \$1,800.00

ACCOUNT # 4104140014934039  
Payment Due Date 03/10/08  
MINIMUM PAYMENT DUE \$110.00

CALL 1-866-523-7587 TO MAKE YOUR  
PAYMENT OVER THE PHONE OR  
VISIT US ONLINE AT  
WWW.CIRCUITCITYREWARDS.COM

TRANSACTION DETAIL

ing	Transaction Date	Reference Number	Transactions	Charges & Credits \$
6	01/12	6013275717011037	SOUPPLANTATION #17 LOS ANGELES CA	11.24
6	01/12	6013349544161698	RALPHS #0284 SF4 CULVER CITY CA	7.80
6	01/14	0397718004897000	CIRCUIT CITY PURCHASE	933.53
			121 30" AND LARGER TVS	
6	01/14	6015730150279528	ROLL N RYE CULVER CITY CA	13.78
6	01/14	6015070214459019	CARY PHOTO LAB CULVER CITY CA	23.59
7	01/16	7083000000000000	CIRCUIT CITY PURCHASE	6.51
			396 COMPUTER MEDIA	
			077 DVD SOFTWARE	
7	01/15	6016118000100172	EAST WIND 4 CULVER CITY CA	19.54
7	01/16	6018020000433553	SUBWAY SANDWICHES # LOS ANGELES CA	5.39
8	01/16	6017207599700306	BURGER KING # 9216 Q07 LOS ANGELES CA	2.48
8	01/16	6017749054440174	RITE AID STORE 5444 LOS ANGELES CA	3.91
9	01/16	6018138018801123	EL POLLO LOCO 3301 LOS ANGELES CA	7.65
10	01/19	6019882856290191	LA TIMES SUB* 1378846016, 800-628-4637 CA	107.03
10	01/18	6019018000632878	BUFFET CITY LOS ANGELES CA	14.60
10	01/18	6019690192691108	SMART & FINAL CO. WEST LOS ANGECA	17.21
13	01/19	6020117724010040	DOMINO'S PIZZA #08308 LOS ANGELES CA	27.71
14	01/20	6023023286891108	SAT PROS 628-5892222 CA	420.00
15	01/24	6025002403498443	5 DE MAYO TACOS CULVER CITY CA	6.77
16	01/25	7675300000000000	CIRCUIT CITY PURCHASE	1.62
			396 COMPUTER MEDIA	
16	01/25	2130800000000000	CIRCUIT CITY PURCHASE	82.24
			142 DIGITAL VIDEO	
16	01/25	6025000139810579	HHFONECALLELECTRONICS 800-340-4770 WA	284.02
17	01/25	6026710009432154	DENNY'S INC CULVER CITY CA	7.48
17	01/25	6026380143899162	OFFICE DEPOT #951 CULVER CITY CA	34.84
17	01/25	6026701066620484	HUS SZECHWAN 310-8370252 CA	30.90
10	01/27	6028130283159484	NEW PANDA BUFFET LOS ANGELES CA	20.53

EXPLANATION OF CODES ON REVERSE  
AVAILABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT  
REVISIONS: \* = Payment, \*\* = Credit

MAIL BILLING AND OTHER INQUIRIES TO:  
CHASE CARDMEMBER SERVICE  
PO BOX 100045  
KENNESAW, GA 30156-9245  
See form on reverse side.

CHASE

EXH B



021306 Statement

Customer Name  
GARY J DAVIS

Account Number  
4104-1400-1493-4039

Page 3 of 3

**Payment Tips**

- Call 1-866-322-7587 to make your payment over the phone! (A small fee will apply.)
- Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- Checks should be made payable to Chase.
- Write your account number on your check or money order.
- Include the payment coupon with your payment in the envelope provided.
- Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9244

As a Valued Cardmember, you can claim high-quality merchandise from top brands such as Lenox, Harley-Davidson, Cross and many more! Just go to [www.rewardcenter.com](http://www.rewardcenter.com) and enter 157511 where it asks for your certificate number. These products are not available to the general public, so act now!

Redeem your rewards points today and use your Rewards Certificates towards your next purchase at Circuit City. For every 500 points you earn, you'll receive a \$5 Rewards Certificate. Just visit [circuitcityrewards.com](http://circuitcityrewards.com) anytime to check your point balance and redeem for Rewards Certificates.

**REWARDS POINTS SUMMARY**

Your Circuit City Rewards ID Number is 70021534100

The number of Rewards Points you have earned (through 02/13/2006) 53,171

The total number of Rewards Points that are available for you to redeem 1,699

The number of Rewards Points that are pending in your account 472

**FINANCE CHARGE SUMMARY**

	Average Daily Balance	Daily Periodic Rate	Corresponding Annual Percentage Rate	Periodic Finance Charge	ANNUAL PERCENTAGE RATE	
Purchases A	\$2,312.92	0.0852%	23.79%	\$46.74	24.25%	SEE REVERSE SIDE FOR IMPORTANT INFORMATION
Purchases B	\$1,781.32	0.0645%	23.54%	\$35.83		
Cash Advances C	\$0.00	0.0781%	27.75%	\$0.00		

\* PERIODIC RATE MAY VARY FROM MONTH TO MONTH

SEE EXPLANATION OF CODES ON REVERSE  
AVAILABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT  
USABREVIATIONS: "P" = Payment, "C" = Credit  
For 24 hour automated information call 1-866-522-7587  
Customer Service Advisors are available Monday - Friday 10am - 9pm ET  
To report your credit card lost or stolen 24 hours a day call (800) 942-4142  
For T.D.D. (Telephone Device for the Hearing Impaired), call (800) 923-1794

MAIL BILLING AND OTHER INQUIRIES TO:  
CHASE CARDMEMBER SERVICE  
PO BOX 100045  
KENNESAW, GA 30156-9245  
See form on reverse side.

CHASE



031308 Statement

41041400149340390000119000004497579

CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9244

ACCOUNT # 4104 1400 1493 4039  
NEW BALANCE \$4,497.57  
PAYMENT DUE DATE 04/07/08  
MINIMUM PAYMENT DUE \$119.00

CHASE CARDMEMBER SERVICE  
PO BOX 94010  
PALATINE, IL 60094-4010

MAIL  
CHECK  
TO:

MAKE CHECKS PAYABLE TO CHASE

\$  
AMOUNT ENCLOSED

GARY J DAVIS  
3125 ROBERTS AVE  
CULVER CITY CA 90232-7415

PLEASE INDICATE ANY CHANGE TO ADDRESS OR TELEPHONE BELOW OR VISIT WWW.CIRCUITCITYREWARDS.COM  
Street Address Home Telephone  
City/State/Zip Business Telephone

**BALANCE SUMMARY**

Previous Balance \$2,782.68  
Payments and Credits \$2,782.68  
Cash Advances \$0.00  
Purchases/Adjustments \$4,420.32  
FINANCE CHARGES \$77.25  
New Balance \$4,497.57

**ACCOUNT INFORMATION**

Statement Closing Date 03/13/08  
Days in Billing Cycle 28  
New Balance \$4,497.57  
Credit Line \$6,000.00  
Available Credit \$1,502.43  
Available Cash Advance\*\* \$1,502.43

ACCOUNT # 4104140014934039  
Payment Due Date 04/07/08  
MINIMUM PAYMENT DUE \$119.00

CALL 1-866-822-7587 TO MAKE YOUR  
PAYMENT OVER THE PHONE OR  
VISIT US ONLINE AT  
WWW.CIRCUITCITYREWARDS.COM

**PROMOTIONAL SUMMARY**

standing motions	Average Daily Balance	Deferred Average Daily Balance	Daily Periodic Rate**	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE	Accumulated Deferred Finance Charges	Promotional Payoff Balance	Promotional Ending Date
CCP 22 MOS NMVP		\$218.00	0.0687%	23.99%	\$3.99	\$263.09	01/14/2008	

IF ACCOUNT BALANCE MAY CONTAIN PURCHASES THAT REQUIRE A MINIMUM MONTHLY  
PAYMENT BY THE DUE DATE ON THIS STATEMENT, PLEASE REFER TO THE MINIMUM  
PAYMENT DUE FOR THAT AMOUNT. ACCUMULATED DEFERRED FINANCE CHARGES WILL BE  
PAID IF YOUR PROMOTIONAL BALANCE(S) IS PAID IN FULL BY THE PROMOTIONAL  
ENDING DATE SHOWN IN THE PROMOTIONAL SUMMARY SECTION. THE PROMOTIONAL END  
DATE MAY DIFFER FROM YOUR DUE DATE.

**TRANSACTION DETAIL**

Seq No	Transaction Date	Reference Number	Transactions	Charges & Credits
			Purchases	
14	02/13	6044296110635675	BEST BUY 00003939 W HOLLYWOOD CA	1,785.98
14	02/12	6044890441473768	SMART & FINAL CO. WEST LOS ANGECA	17.21
14	02/12	6044980003581934	ASIAN KITCHEN CULVER CITY CA	9.71
15	02/13	6045207596700376	BURGER KING # 9218 Q07 LOS ANGELES CA	3.78
15	02/14	6046980002975133	QUINZO'S VENICE & ROBERTS CULVER CITY CA	7.35
17	02/15	6047585315218229	PIZZA HUT 07065015 CULVER CITY CA	14.60
20	02/17	6048512022011284	NORM'S LA CIENEGA #50 LOS ANGELES CA	13.29
20	02/18	6050049000289278	SUPER STAR BUFFET RESTAURANT CULVER CITY CA	18.75
20	02/18	6050381831192627	RALPH'S #0284 SF4 CULVER CITY CA	12.75
21	02/20	6051235111972634	BEST BUY 00003939 W HOLLYWOOD CA	8.85
22	02/21	4889500000000000	CIRCUIT CITY CREDIT PURCHASE 142 DIGITAL VIDEO	\$2,240

EXPLANATION OF CODES ON REVERSE  
TABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT  
REVISIONS: "P" = Payment, "C" = Credit  
REFER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:  
CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9244  
See form on reverse side.

CHASE

EXH C



031306 Statement

Customer Name  
GARY J DAVIS

Account Number  
4104-1400-1493-4039

Page 2 of 3

Payment Tips

- Call 1-866-522-7587 to make your payment over the phone! (A small fee will apply.)
- Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- Checks should be made payable to Chase.
- Write your account number on your check or money order.
- Include the payment coupon with your payment in the envelope provided.
- Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9244

Posting Date	Transaction Date	Reference Number	Transactions	Charges & Credits
02/22	02/20	8052118000100573	WOR ON FIRE INC LOS ANGELES CA	28.17
02/22	02/20	8052333117291564	COMPUSA/GOOD GUYS #740 LOS ANGELES CA	161.54
02/22	02/20	8052207599700388	BURGER KING # 8218 Q07 LOS ANGELES CA	2.48
02/23	02/21	8053384323115341	KFC 2810053 28100529 CULVER CITY CA	4.85
02/23	02/21	8989899004897000	CIRCUIT CITY CREDIT PURCHASE	933.53cr
			121 30" AND LARGER TV'S	
02/24	02/23	8054000594427855	TWAX/PWR086/MAGAZINE P&H 877-813-0001 NY	2.00
02/24	02/23	8055470096300020	TASTE OF INDIA - C CULVER CITY CA	14.27
02/27	02/22	8055138011473500	EZ NEW WEB LAUNDROMAT CULVER CITY CA	5.45
02/27	02/23	8055990551481334	SMART & FINAL CO. WEST LOS ANGELES CA	42.10
02/27	02/24	8056286299800186	PAPA JOHN'S PIZZA #2380 LOS ANGELES CA	19.73
02/27	02/24	8056286299800476	PAPA JOHN'S PIZZA #2380 LOS ANGELES CA	2.00
02/28	02/26	8058101912892422	IHOP #782 LOS ANGELES CA	12.07
02/28	02/27	8058123385012788	GABBY'S MEDITERRANEAN R LAS ANGELES CA	17.70
03/01	02/27	8059783000102064	JITS #0293 00002931 LOS ANGELES CA	2.15
03/01	02/27	8059701066620476	HUS SZECHWAN LOS ANGELES CA	22.64
03/01	02/27	8059207599700437	BURGER KING # 8218 Q07 LOS ANGELES CA	2.48
03/03	03/02	8061000257186383	XM SATELLITE RADIO 800-XMRADIO OC	19.94
03/08	03/03	0211022004959600	CIRCUIT CITY PURCHASE	2,000.00
			126 PLASMA TV	
			127 MOUNTS	
03/09	03/07	8067197310681034	PANCA EXPRESS 00006189 CULVER CITY CA	6.92
03/09	03/07	8067396799783853	RALPHS #0086 SF4 CULVER CITY CA	29.43
03/10	03/07	8069442545100024	INDUSTRY CAFE AND CULVER CITY CA	9.75
03/10	03/09	8069293015400299	KRISTINA SITALIAN LOS ANGELES CA	16.27
03/13	03/09	8069398348919784	AUTOZONE #5433 LOS ANGELES CA	4.32
03/13	03/10	806938535829664	RALPHS #0086 SF4 CULVER CITY CA	3.86
03/13	03/10	8069200078900237	2020 VIDEO #12 LOS ANGELES CA	12.99
03/13	03/10	8070295111953272	BEST BUY 00001792 CULVER CITY CA	39.05
03/13	03/10	8070295111953322	BEST BUY 00001792 CULVER CITY CA	40.55
03/13	03/10	8070116340010813	BAJA FRESH 10142 CULVER CITY CA	7.63
03/13	03/11	8071503108450086	BESTBUYCOM 88994009 888-BESTBUY MN	20.54
03/13	03/12	8072120728208791	NEW PANCA BUFFET LOS ANGELES CA	10.80
03/13	03/13		PURCHASE FINANCE CHARGE*	77.25
			Payments/Credits	
03/08	03/04	8065001000000010	ONLINE PMT RCVD-THANK YOU	1,006.00py
03/07	03/05	8066001000000019	ONLINE PMT RCVD-THANK YOU	730.91py

IMPORTANT INFORMATION

ATTENTION: IF YOUR ACCOUNT IS IN DISPUTE FOR \$396.40, THIS AMOUNT HAS NOT BEEN INCLUDED IN THE FINANCE CHARGE OR MINIMUM PAYMENT CALCULATIONS.

EXPLANATION OF CODES ON REVERSE  
LABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT  
REVISIONS: \* = Payment, \*\* = Credit  
REFER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:  
CHASE CARDMEMBER SERVICE  
PO BOX 100045  
KENNESAW, GA 30156-9245  
See form on reverse side.

CHASE



031308 Statement

Customer Name  
GARY J DAVIS

Account Number  
4104-1400-1403-4038

Page 3 of 3

**Payment Tips**

- Call 1-866-522-7587 to make your payment over the phone! (A small fee will apply.)
- Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- Checks should be made payable to Chase.
- Write your account number on your check or money order.
- Include the payment coupon with your payment in the envelope provided.
- Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9244

Use your Circuit City credit card and take advantage of special financing promotions available at your local Circuit City stores!

As a Valued Cardmember, you can claim high-quality merchandise from top brands such as Lenox, Harley-Davidson, Cross and many more! Just go to [www.rewardcenter.com](http://www.rewardcenter.com) and enter 157511 where it asks for your certificate number. These products are not available to the general public, so act now!

Redeem your rewards points today and use your Rewards Certificates towards your next purchase at Circuit City. For every 500 points you earn, you'll receive a \$5 Rewards Certificate. Just visit [circuitcityrewards.com](http://circuitcityrewards.com) anytime to check your point balance and redeem for Rewards Certificates.

**REWARDS POINTS SUMMARY**

Your Circuit City Rewards ID Number is 70021534100

The number of Rewards Points you have earned (through 03/10/2006) 50,421

The total number of Rewards Points that are available for you to redeem 1,790

The number of Rewards Points that are pending in your account -2,369

**FINANCE CHARGE SUMMARY**

#	Average Daily Balance	Daily Periodic Rate**	Corresponding Annual Percentage Rate	Periodic Finance Charge	ANNUAL PERCENTAGE RATE	
Purchases A	\$4,232.35	0.0052%	23.79%	\$77.25	22.65%	SEE REVERSE SIDE FOR IMPORTANT INFORMATION
Purchases B	\$0.00	0.0052%	23.79%	\$0.00		
Cash Advances C	\$0.00	0.0791%	27.79%	\$0.00		

PERIODIC RATE MAY VARY FROM MONTH TO MONTH

EXPLANATION OF CODES ON REVERSE  
AVAILABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT  
ABBREVIATIONS: "p" = Payment, "a" = Credit  
24-hour automated information call 1-866-522-7587  
Customer Service Advisors are available Monday - Friday 10am - 8pm ET  
Report your credit card lost or stolen 24 hours a day call (800) 888-4142  
T.O.D. (Telephone Device for the Hearing Impaired), call (800) 825-1764  
REFER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE

MAIL BILLING AND OTHER INQUIRIES TO:  
CHASE CARDMEMBER SERVICE  
PO BOX 100044  
KENNESAW, GA 30156-9245  
See form on reverse side.

CHASE

# Exhibit 2

FILED COPY

2006 AUG -1 PM 3:45

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

1 STROOCK & STROOCK & LAVAN LLP  
2 JULIA B. STRICKLAND (State Bar No. 83013)  
3 STEPHEN J. NEWMAN (State Bar No. 181570)  
4 DAVID W. MOON (State Bar No. 197711)  
5 NANCY M. LEE (State Bar No. 232708)  
6 2029 Century Park East, Suite 1800  
7 Los Angeles, California 90067-3086  
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9 Facsimile: 310-556-5959  
10 Email: [lacalendar@stroock.com](mailto:lacalendar@stroock.com)

11 Attorneys for Defendant  
12 CHASE BANK USA, N.A.

13 ATTORNEY AT LAW  
14 Peter E. Glick, Esq. (State Bar No. 127979)  
15 400 Capitol Mall, Suite 1100  
16 Sacramento, CA 95814  
17 Telephone: 916-558-6182  
18 Facsimile: 916-448-2434  
19 Email: [pglick@pglick.com](mailto:pglick@pglick.com)

20 Attorney for Defendant  
21 CIRCUIT CITY STORES, INC.

22 UNITED STATES DISTRICT COURT  
23 CENTRAL DISTRICT OF CALIFORNIA

24 GARY DAVIS, an individual, on behalf )  
25 of himself, and as PRIVATE )  
26 ATTORNEY GENERAL, and on behalf )  
27 of all others similarly situated )

28 Plaintiff,

v.

CHASE BANK U.S.A., N.A., a  
Delaware corporation; CIRCUIT CITY  
STORES, INC., a Virginia corporation;  
and DOES 1 through 50, inclusive,

Defendants.

Case No.

NOTICE OF REMOVAL



1           **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**  
2 **DISTRICT OF CALIFORNIA:**

3           PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1331, 1332, 1367,  
4 1441, 1446, 1453 and the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. 109-  
5 2, § 1(a), 119 Stat. 4 (Feb. 18, 2005) (codified as amended in scattered sections of  
6 28 U.S.C.), defendants Chase Bank USA, N.A. ("Chase") and Circuit City Stores,  
7 Inc. ("Circuit City") (together, "Defendants"), hereby remove the action entitled  
8 Gary Davis v. Chase Bank U.S.A., N.A., et al., Los Angeles County Superior Court  
9 Case No. BC354564 (the "Action"), to the United States District Court for the  
10 Central District of California, on the following grounds:

11                           **The Removal Is Timely**

12           1. Plaintiff Gary Davis ("Plaintiff") served the Summons and Complaint in  
13 the Action on the Defendants on July 3, 2006. The Complaint was the first pleading  
14 received by Defendants, through service or otherwise, setting forth the claim for  
15 relief upon which the Action is based. This Notice of Removal has been filed within  
16 the thirty-day timeframe and is therefore timely under 28 U.S.C. § 1446(b). A true  
17 and correct copy of the Complaint in this Action is attached hereto as Exhibit A.

18                           **This Court Has Removal Jurisdiction Under CAFA**

19           2. This Court has original jurisdiction over this Action pursuant to 28  
20 U.S.C. § 1332(d), and hence this Action is properly removable pursuant to 28 U.S.C.  
21 § 1453(b), because:

22                   a. Diversity of citizenship exists. Under CAFA, diversity is  
23 satisfied when "any member of a class of plaintiffs is a citizen of a State different  
24 from any defendant . . . ." 28 U.S.C. § 1332(d)(2)(A). Chase is a national bank  
25 located in Delaware and therefore is a citizen of Delaware. See 28 U.S.C. § 1348  
26 (national bank is a citizen of the state in which it is "located"); Wachovia Bank, N.A.  
27 v. Schmidt, III, 126 S. Ct. 941, 952, 163 L. Ed. 2d 797 (2006) (holding that a  
28 national bank is "located," for diversity jurisdiction purposes, in the state designated

1 in its articles of association as its main office). Circuit City is a Virginia corporation  
2 with its principal place of business in Richmond, Virginia, and therefore is a citizen  
3 of Virginia. Plaintiff is a resident of Los Angeles, California, and a citizen of  
4 California. (Compl. ¶ 2.)

5 b. This Action is a "class action." A "class action," as defined by  
6 CAFA, is "any civil action filed under rule 23 of the Federal Rules of Civil  
7 Procedure or similar state statute or rule of judicial procedure authorizing an action  
8 to be brought by 1 or more representative persons as a class action." 28 U.S.C.  
9 §§ 1332(d)(1)(B), 1453(a). Plaintiff alleges that the Action is brought on behalf of a  
10 putative class consisting of:

11 All persons who, in the past four years, used their Circuit  
12 City Rewards Card to

13 (a) make a Promotional Purchase in California;

14 (b) had made the minimum payment, or greater payment on  
15 their prior statement closing balance ("Payment"); and

16 (c) were assessed a finance charge on their prior balance  
17 without Chase having applied that Payment to their prior  
18 balance because Chase Bank applied the payment to the  
19 Promotional Purchase rather than to the prior balance.

20 (Compl. ¶ 11.) Class actions are permitted under California law pursuant to  
21 California Code of Civil Procedure section 382 and California Civil Code section  
22 1781.

23 c. The amount in controversy is satisfied. The amount in  
24 controversy under CAFA is satisfied "if the matter in controversy exceeds the sum or  
25 value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). For  
26 purposes of determining the amount in controversy in class actions, CAFA expressly  
27 requires that "the claims of the individual members shall be aggregated . . ." 28  
28 U.S.C. § 1332(d)(6). Plaintiff claims that Chase improperly applied his payment to a

1 promotional balance rather than to his regular balance, resulting in \$77.25 in  
2 additional finance charges in March 2006. (Compl. ¶ 25.) Plaintiff claims to have  
3 been improperly billed additional finance charges in unstated amounts “on at least  
4 two (2) other occasions.” (Id. ¶ 27.) Plaintiff alleges that Defendants improperly  
5 billed additional finance charges to other class members “in a manner similar, or  
6 identical to that of Plaintiff.” (Id.) Plaintiff seeks, among other things:  
7 (1) compensatory damages (in the amount of the alleged improperly billed finance  
8 charges); (2) restitution and disgorgement (of these and other amounts); (3) punitive  
9 damages; and (4) an injunction prohibiting Chase from prioritizing the application of  
10 payments to promotional balances (thus precluding Chase from collecting the finance  
11 charges at issue on all future accounts). (Compl. ¶¶ 45-46, 48, 55-56, 61, 66, 68-70.)  
12 Aggregating the claims of Plaintiff and the putative class, the amount in controversy  
13 exceeds the sum or value of \$5,000,000. See 28 U.S.C. § 1332(d)(6); see also Hunt  
14 v. Washington State Apple Advertising Comm’n, 432 U.S. 333, 347, 97 S. Ct. 2434,  
15 53 L. Ed. 2d 383 (1977) (“In actions seeking declaratory or injunctive relief, it is  
16 well established that the amount in controversy is measured by the value of the  
17 object of the litigation.”) (citations omitted); Simmons v. PCR Technology, 209 F.  
18 Supp. 2d 1029, 1033 (N.D. Cal. 2002) (holding that the amount in controversy may  
19 include punitive damages).

### 20 Removal By Chase and Circuit City Is Proper

21 3. CAFA allows for the removal of class actions to federal court in  
22 accordance with 28 U.S.C. § 1446, “except that such action may be removed by any  
23 defendant without the consent of all defendants.” 28 U.S.C. § 1453(b). Accordingly,  
24 Chase and Circuit City are permitted to file this Notice of Removal without the  
25 joinder or consent of any other defendant. Nevertheless, all known defendants have  
26 joined in this removal.  
27  
28

Notice Has Been Effectuated

4. A copy of this Notice of Removal is being concurrently filed with the Superior Court of the State of California for the County of Los Angeles and concurrently served on all counsel of record.

Dated: August 1, 2006

STROOCK & STROOCK & LAVAN LLP  
JULIA B. STRICKLAND  
STEPHEN J. NEWMAN  
DAVID W. MOON  
NANCY M. LEE

By: 

David W. Moon

Attorneys for Defendant  
CHASE BANK USA, N.A.

Dated: August 1, 2006

ATTORNEY AT LAW  
PETER E. GLICK, ESQ.

By:  by permission

Peter E. Glick

Attorney for Defendant  
CIRCUIT CITY STORES, INC.

STROOCK & STROOCK & LAVAN LLP  
2029 Century Park East, Suite 1800  
Los Angeles, California 90067-3086

# EXHIBIT B

B 10 (Official Form 10) (04/13)

<b>UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA</b>		<b>AMENDED PROOF OF CLAIM</b>
Name of Debtor: Circuit City Stores, Inc.	Case Number: 08-35653	<b>COURT USE ONLY</b>
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Chase Bank USA, N.A.		<input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim.
Name and address where notices should be sent: Frank A. Merola, Esq. Stephen J. Newman, Esq. Stroock & Stroock & Lavan LLP 2029 Century Park East 16th Floor Los Angeles, CA 90067  Telephone number: 310-556-5800      email: fmerola@stroock.com snewman@stroock.com		Court Claim Number: <u>7065</u> (If known)  Filed on: <u>1/28/2009</u>
Name and address where payment should be sent (if different from above):   Telephone number:      email:		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
<b>1. Amount of Claim as of Date Case Filed:</b> <u>\$7,152,232.29</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> (See instruction #2) <u>See Attached Rider</u>		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____  Value of Property: _____  Annual Interest Rate: _____ % <input type="checkbox"/> Fixed    or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time the case was filed, included in secured claim, if any: _____  Basis for perfection: _____  Amount of Secured Claim: _____  Amount Unsecured: _____
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>  <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).         </div> <div style="width: 30%;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507(a)(4).         </div> <div style="width: 30%;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5).         </div> </div> <div style="display: flex; justify-content: flex-end; margin-top: 10px;">         Amount entitled to priority: _____       </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 30%;"> <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).         </div> <div style="width: 30%;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).         </div> <div style="width: 30%;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).         </div> </div>		
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		

6. **Credits.** The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. **Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. **Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief

Print Name: Stephen Newman  
Title: Partner  
Company: Stroock & Stroock & Lavan LLP

Stephen Newman November 10, 2014  
(Signature) (Date)

Address and telephone number (if different from notice address above):

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 and 3571.*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA**

*In re:*

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RIDER TO AMENDED PROOF OF CLAIM OF CHASE BANK USA, N.A.**

1. Chase Bank USA, N.A. (“Chase”) submits this rider (“Rider”) to its amended proof of claim (the “Amended Proof of Claim”) against Circuit City Stores, Inc., et al. (the “Debtors” or “Circuit City”). This Rider is an addendum to and shall be deemed to be part of and incorporated by reference in the Amended Proof of Claim. The filing of this Amended Proof of Claim is without prejudice to, and is not intended to supersede the Initial Proof of Claim (as defined below).

2. On January 28, 2009, Chase timely and properly filed a proof of claim in these proceedings (the “Initial Proof of Claim”). As set forth in the Initial Proof of Claim, Chase reserved the right to amend the Initial Proof of Claim as necessary or appropriate. Except as expressly amended herein, the Initial Proof of Claim in its entirety remains in full force and effect.

### BASIS FOR CLAIM

3. As provided in the Initial Proof of Claim, a complaint was filed on June 26, 2006 in the Superior Court of the State of California for the County of Los Angeles, Central District, in Davis v. Chase Bank USA, N.A., et al., Case No. BC354564, and removed on August 1, 2006



to United States District Court for the Central District of California (the “District Court”), Case No. CV06-4804 DDP (PJWx) (herein the “Underlying Complaint” or the “Underlying Case”).

4. As provided in the Initial Proof of Claim, the Underlying Complaint centered on Circuit City and its advertising to its customers. The specific advertising challenged in the Underlying Complaint was produced by Circuit City and not by Chase. Both the Underlying Complaint and the District Court stated that Circuit City’s advertising was at the core of the litigation – the issue being whether Circuit City’s advertising was misleading and deceptive.

5. On April 23, 2014, the plaintiff in the Underlying Case filed a motion for the preliminary approval of the Stipulation and Agreement of Settlement (the “Settlement Agreement”). The Settlement Agreement was attached as Exhibit 1 to the Declaration of Drew E. Pomerance in Support of Plaintiffs’ Motion for Preliminary Approval of Settlement. A copy of the motion and declaration are attached hereto as Exhibits A and B, respectively. The District Court granted the preliminary approval of the Settlement Agreement on June 5, 2014. A copy of the preliminary approval order is attached hereto as Exhibit C. On October 27, 2014, the District Court granted the final approval of the Settlement Agreement. A copy of the Judgment and Amended Final Approval Order are attached hereto as Exhibits D and E, respectively.

6. Pursuant to the terms of the Settlement, Chase will pay a total of \$5,500,000 (the “Settlement Amount”) in settlement of the claims in the Underlying Case. Additionally, Chase has incurred a total of \$36,688.92 in costs associated with defending the Underling Case and \$1,615,543.37 in legal fees. A copy of the Service and Expense Remittance Summary is attached as Exhibit F.<sup>1</sup>

---

<sup>1</sup> Copies of the time entries associated with the applicable invoices are available upon written request.

7. Circuit City is required to indemnify Chase under, *inter alia*, Article X of a certain Consumer Credit Card Program Agreement by and between Circuit City Stores, Inc. and Bank One, Delaware, N.A. dated as of January 16, 2004.

8. Accordingly, Chase has valid claims for defense and indemnity against Circuit City for the Settlement Amount and the costs of defending the Underlying Case. Moreover, Circuit City has acknowledged Chase's indemnity claim, as reflected on Debtors' Schedule F filed on docket entry number 1130, page 149 of this bankruptcy.

9. To the extent any portion of this claim arises subsequent to the commencement of the Bankruptcy Case, such portion is entitled to administrative expense priority pursuant to 11 U.S.C. § 507(a)(1). Chase asserts that those amounts are entitled to administrative priority.

10. To the extent this claim is neither secured nor entitled to priority status, Chase reserves and asserts a general unsecured claim in that amount.

11. Additional information will be furnished by Chase upon reasonable request.

#### **RESERVATION OF RIGHTS**

12. No judgment has been entered against the Debtors on any of the claims asserted herein and no payment has been made on behalf of the claim subsequent to the Petition Date.

13. This claim is not subject to any offsets or counterclaim.

14. Chase reserves all rights to amend, modify or supplement this Amended Proof of Claim in any respect, including, without limitation to include additional claims for reimbursement, set-off, damages, interest and/or costs and expenses, as appropriate. The filing of this Amended Proof of Claim shall not be deemed a waiver of any claim in law or in equity that Chase may have against the Debtors, its affiliates, or any other persons or entities.

15. The filing of this claim is specifically made without any election of rights and remedies, and Chase hereby reserves all rights and remedies which it may have, in addition to the filing of and pursuit of this Amended Proof of Claim, against any other person or entity.

16. The execution and filing of this Amended Proof of Claim is not a waiver of any of Chase's rights against any person, entity or property including, without limitation, the right to move to withdraw the reference with respect to the subject matter of this claim or otherwise a waiver or release of Chase's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court Judge, and any right to trial by jury that Chase may have in any civil proceeding arising in or related to this case, nor is it a consent to jurisdiction of this or any court except with respect to the allowance of the claims asserted herein.

#### **NOTICES**

17. All notices concerning this Amended Proof of Claim should be sent to the following party at the addresses set forth below:

Stroock & Stroock & Lavan LLP  
Frank A. Merola, Esq.  
Stephen J. Newman, Esq.  
2029 Century Park East 16th Floor  
Los Angeles, CA 90067

**EXHIBIT A**

**Motion for Preliminary Approval of Settlement**

1 Drew E. Pomerance, Esq. (SBN. 101239), dep@rpnalaw.com  
 2 Burton E. Falk, Esq. (SBN. 100644), bef@rpnalaw.com  
 3 David R. Ginsburg, Esq. (SBN. 210900), drg@rpnalaw.com  
 4 **ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP**  
 5 5820 Canoga Avenue, Suite 250  
 6 Woodland Hills, California 91367  
 7 Telephone: (818) 992-9999  
 8 Facsimile: (818) 992-9991

9 [Additional Counsel Continued On Next Page]

10 Attorneys for Plaintiffs GARY DAVIS and  
 11 GENE CASTILLO, individually,  
 12 as Private Attorney Generals, and on behalf  
 13 of all others similarly situated

14 **UNITED STATES DISTRICT COURT**  
 15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 GARY DAVIS, an individual; on  
 17 behalf of himself, and as PRIVATE  
 18 ATTORNEY GENERAL, and on  
 19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 CHASE BANK U.S.A., N.A., a  
 23 Delaware corporation; and DOES 1  
 24 through 50, inclusive,

25 Defendants.

Case No. CV 06 4804 DDP (PJWx)

Honorable Dean D. Pregerson

**PLAINTIFFS' NOTICE OF  
 MOTION AND MOTION FOR  
 PRELIMINARY APPROVAL OF  
 SETTLEMENT; MEMORANDUM  
 OF POINTS AND AUTHORITIES  
 IN SUPPORT THEREOF**

**[Declaration of Drew E. Pomerance  
 and Attached Exhibits Filed  
 Concurrently; [Proposed] Order  
 Lodged Concurrently]**

**Date: June 2, 2014**  
**Time: 10:00 a.m.**  
**Courtroom: 3**

1 Jeff Westerman, Esq. (SBN. 94559)

2 jwesterman@jswlegal.com

3 Jordanna G. Thigpen, Esq. (SBN. 232642)

4 jthigpen@jswlegal.com

5 **WESTERMAN LAW CORP.**

6 1925 Century Park East, Suite 2100

7 Los Angeles, California 90067

8 Telephone: (310) 698-7450

9 Facsimile: (310) 201-9160

10 Nicole Duckett Fricke, Esq. (SBN. 198168)

11 ndfricke@milberg.com

12 **MILBERG, LLP**

13 One California Plaza

14 300 South Grand Avenue, Suite 3900

15 Los Angeles, California 90071

16 Telephone: (213) 617-1200

17 Facsimile: (213) 617-1975

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21  
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24  
25  
26  
27  
28  
Attorneys for Plaintiffs GARY DAVIS and  
GENE CASTILLO, individually,  
as Private Attorney Generals, and on behalf  
of all others similarly situated

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1 PLEASE TAKE NOTICE that on June 2, 2014 at 10:00 a.m., or as soon  
2 thereafter as the matter may be heard before the Honorable Dean D. Pregerson in  
3 Courtroom 3 of the above-entitled court, located at 312 North Spring Street, Los  
4 Angeles, California, Plaintiffs Gary Davis and Gene Castillo will move this Court  
5 for an order (1) granting preliminary approval of the settlement in this case, (2)  
6 provisionally certifying the class for settlement purposes, (3) approving the form  
7 and manner of notice to be provided to the proposed settlement class and directing  
8 that notice be given to the proposed settlement class, (4) appointing Plaintiffs as  
9 class representatives of the proposed settlement class, (5) confirming the  
10 appointment of Roxborough, Pomerance, Nye & Adreani LLP, Westerman Law  
11 Corp., and Milberg, LLP, as co-counsel for the proposed settlement class, and (6)  
12 scheduling a hearing for final approval of the proposed settlement.

13 Defendant Chase Bank U.S.A., N.A. (Chase) does not oppose this motion,  
14 which is being made following conferences between counsel over the last few  
15 months, pursuant to L.R. 7-3.

16 This motion is based on this notice and motion, the accompanying  
17 memorandum of points and authorities, the declaration of Drew E. Pomerance and  
18 documents attached thereto, all the matters of record filed with the Court, and such  
19 other evidence and argument as may be submitted to the Court.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 DATED: April 23, 2014

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

2 By: s/ Drew E. Pomerance

3 DREW E. POMERANCE

4 BURTON E. FALK

5 Attorneys for Plaintiffs GARY DAVIS and

6 GENE CASTILLO, individually,

as Private Attorney Generals, and on behalf

7 of all others similarly situated

8 DATED: April 23, 2014

WESTERMAN LAW CORP.

9 By: s/ Jeff Westerman

10 JEFF WESTERMAN

11 JORDANNA G. THIGPEN

12 Attorneys for Plaintiffs GARY DAVIS and

13 GENE CASTILLO, individually,

14 as Private Attorney Generals, and on behalf

of all others similarly situated

15 DATED: April 23, 2014

MILBERG LLP

16 By: s/ Nicole Duckett Fricke

17 NICOLE DUCKETT FRICKE

18 Attorneys for Plaintiffs GARY DAVIS and

19 GENE CASTILLO, individually,

20 as Private Attorney Generals, and on behalf

21 of all others similarly situated

1 **I. INTRODUCTION**

2 The parties have reached an agreement to settle this matter on the terms set  
3 forth in the Settlement Agreement (Agreement) attached as Exhibit 1 to the  
4 concurrently filed Declaration of Drew E. Pomerance. The terms of the settlement  
5 more than meet the requirements for preliminary approval. Chase has agreed to  
6 pay \$5.5 million in cash benefits to resolve this matter.

7 The Class alleged that Chase misled consumers and failed to properly apply  
8 its customers' payments first to regular balance purchases before promotional  
9 purchases. The result was that class members were wrongly assessed finance  
10 charges on those purchases.

11 This settlement pays real cash benefits back to class members and  
12 compensates them for some of the finance charges that Chase assessed against  
13 them. The settlement is the result of extensive negotiations that continued on and  
14 off for the past four years, substantial discovery, investigation, and analysis to  
15 verify the size and extent of the Class, the potential damages they incurred, as well  
16 as a thorough analysis of Plaintiffs' legal theories and Chase's defenses – both on  
17 the merits as well as having to do with class certification issues. As well, the  
18 parties twice mediated the dispute before the Honorable Edward Infante, Ret.,  
19 who helped broker the terms of this Agreement.

20 Accordingly, the parties request that this Court preliminary approve this  
21 settlement as fair, reasonable and in the best interest of the Class, and that the  
22 Court further order that notice be sent to the class members in a manner that  
23 comports with basic notions of due process, and finally that the Court order a final  
24 fairness hearing to be scheduled as set forth below.

25 ///

26 ///

27 ///

28 ///

## II. BACKGROUND OF THE CASE

### A. The Allegations

Plaintiff Gary Davis filed this putative class action complaint on June 26, 2006, alleging that Chase misled and deceived consumers in the manner in which it applied credit card payments to promotional purchases made at Circuit City. Mr. Davis alleged causes of action for violation of the Consumers Legal Remedies Act, violation of Business & Professions Code §17200, violation of Business & Professions Code §17500, fraud and deceit, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. On behalf of the Class, Mr. Davis sought restitution and compensatory damages.

The basis of the lawsuit is Plaintiffs' allegation that Chase engaged in a deceptive and unfair business practice of misrepresenting a promotional purchase program and then misallocating payments made by customers participating in the program. Plaintiffs alleged that this resulted in customers not only failing to receive the benefit of Chase's promotional offer, but also being wrongly assessed finance and interest charges in violation of Chase's cardmember agreement.

Plaintiffs alleged Chase marketed promotional rewards card purchases at Circuit City as "interest free" (or some variant thereof) but charged California credit cardholders interest and fees for those purchases. (First Amended Complaint (FAC), ¶ 1, Docket No. 91.) Plaintiffs asserted that Chase improperly applied credit card payments to the "interest free" promotional balances that were not due before applying them to interest-bearing, non-promotional balances, causing consumers to incur interest and fees they otherwise would not have and in direct contradiction to Chase's advertising and its cardmember agreement. (Id. at ¶¶ 1, 20-25.)

For example, and with respect to Plaintiff Gary Davis, on March 3, 2006, he purchased a \$2,000 television from Circuit City under a promotional offer in which no interest or payments were due until January 2008. (Id. at ¶ 25.) Mr.

1 Davis then submitted a payment of \$1,736.91 to cover his preexisting February  
2 balance. Instead of allocating Mr. Davis' payment to his pre-existing balance,  
3 Chase applied the entire payment toward the just-purchased television, despite the  
4 promotional interest and payment-free grace period. Because Mr. Davis' entire  
5 payment was allocated to the promotional purchase, there were insufficient funds  
6 to cover Mr. Davis' preexisting February statement balance. Accordingly, Chase  
7 assessed a finance charge of \$77.25. (Id. at ¶¶ 22-25.) Plaintiffs alleged that  
8 payments made to Chase should have been allocated to the interest-bearing  
9 portion of balances first rather than to the deferred-interest/deferred-payment  
10 promotional purchases. (Id. at ¶¶ 28-29, 53.)

11 **B. Procedural History**

12 After the June 2006 filing of the case in state court, Defendants removed  
13 the action to this Court in August 2006. (Docket No. 1.) After addressing  
14 removal and remand issues, the case was stayed for approximately 21 months due  
15 to an appeal of the Court's determination that Chase's arbitration clause and class  
16 action waiver provisions in its cardmember agreements were unenforceable under  
17 California law. This Court's determination was eventually affirmed by the Ninth  
18 Circuit. (Docket No. 80.) Around that time, the claims against Circuit City were  
19 withdrawn due to its bankruptcy. (Docket No's. 79, 91.)

20 On March 17, 2009, Plaintiffs filed their FAC. (Docket No. 91.) On  
21 September 3, 2009, the Court dismissed Plaintiffs' Unfair Competition Law claim  
22 to the extent it challenged the allocation of payments apart from the way that  
23 allocation intersects with deceptive advertising. (Docket No. 112.) The Court  
24 subsequently dismissed Plaintiffs' Consumers Legal Remedies Act claim, and  
25 determined that Chase is not liable for any claims related to conduct prior to  
26 Chase's May 25, 2004 acquisition of the credit card assets at issue in the case.  
27 (Docket No's. 167, 203.) On January 16, 2013, the Court granted summary  
28 judgment on the breach of the implied covenant of good faith and fair dealing



1 claim. (Docket No. 291.) Accordingly, the two claims that remain are breach of  
2 contract and a limited claim for violation of the Unfair Competition Law.

3 The Court also denied Plaintiffs' Motion for Class Certification on January  
4 16, 2013. (Docket No. 291.) The denial was based on the Court's finding that the  
5 "factual circumstances surrounding [Plaintiff Gary Davis'] purchases are so  
6 atypical as to fall below the normally permissive standard of Rule 23(a)'s  
7 typicality requirement." The Court found that "questions regarding [Plaintiff  
8 Gary Davis'] individual circumstances are likely to predominate over factual  
9 questions common to the class." (Docket No. 291.)

10 Gene Castillo subsequently moved for an order granting leave to file a  
11 complaint in intervention. Plaintiff Gary Davis moved simultaneously, and in the  
12 alternative, for leave to file a second amended complaint adding Gene Castillo as  
13 a party Plaintiff. (Docket No. 293.) Chase moved to dismiss the entire case as  
14 moot. (Docket No. 296.) These motions are all currently set to be heard on  
15 October 27, 2014. (Docket No. 329.)

16 **C. Mediation and Settlement**

17 The parties initially participated in private mediation on June 18, 2009.  
18 (Declaration of Drew E. Pomerance (Pomerance Decl.), ¶ 2.) A second mediation  
19 with a different neutral, the Honorable Edward Infante, Ret., took place on  
20 November 16, 2011. The parties remained unable to resolve the litigation.  
21 (Pomerance Decl., ¶ 3.)

22 Following the Court's denial of Plaintiff's Motion for Class Certification,  
23 the parties participated in a third mediation on October 22, 2013. This mediation  
24 was again held with Judge Infante. (Pomerance Decl., ¶ 4.) Drew E. Pomerance  
25 of Roxborough, Pomerance, Nye & Adreani, LLP and Jeff Westerman of  
26 Westerman Law Corp., attended on behalf of the Class, while Chase was  
27 represented by its attorneys, Julia Strickland and Stephen Newman of Stroock &  
28 Stroock & Lavan, LLP. Also attending the mediation on behalf of Chase were

1 several of its authorized representatives. (Pomerance Decl., ¶ 5.) The mediation  
2 session lasted all day, and resulted in a tentative agreement which was subject to  
3 confirmatory discovery whereby Chase would have to verify under oath the size  
4 of the Class, the amount of finance charges that Plaintiffs contend were  
5 improperly charged and collected by Chase, and the period of time in which the  
6 promotional purchases were made. (Pomerance Decl., ¶ 6.)

7 Chase produced a detailed declaration under penalty of perjury from  
8 Suzanne Morgan, a Risk Director in Chase's Risk Department who has worked  
9 for Chase or its predecessor Bank One since 1997. Ms. Morgan is familiar with  
10 and oversaw the compilation of data that produced information necessary for  
11 Class Counsel to evaluate the reasonableness of the settlement. (Pomerance Decl.,  
12 ¶ 7.) After carefully evaluating Ms. Morgan's declaration, Class Counsel  
13 determined that the existing deal adequately compensates the Class. (Pomerance  
14 Decl., ¶ 8.) The parties have now formalized and finalized a settlement  
15 agreement.

16 The settlement agreement calls for Chase to establish a settlement fund  
17 totaling \$5.5 million. (Pomerance Decl., ¶ 9.) Class Counsel are now confident  
18 that they have properly evaluated the risks of further prosecuting this class action  
19 as compared to the benefits of the current settlement proposal, and as well have  
20 appropriately evaluated the reasonableness of the benefits that will be going to the  
21 Class. (Pomerance Decl., ¶ 10.)

22 Given the substantial delays resulting from further prosecution of this  
23 lawsuit, Chase's pending motion for dismissal, the Court's denial of the Motion  
24 for Class Certification, and the serious and fundamental question of whether the  
25 Class would ever prevail on the merits, Class Counsel is confident that this  
26 settlement entered into at this time, and on these terms, is more than fair and  
27 reasonable, and should be preliminarily approved by this Court. (Pomerance  
28 Decl., ¶ 11.)

1 **III. THE SETTLEMENT**

2 The settlement reached by the parties provides real and tangible benefits to  
3 the Class, and as such, more than meets the standards required to be deemed fair  
4 and reasonable. This is an all cash settlement, and does not involve the provision  
5 of coupons whatsoever. If approved, the key terms of the settlement are as  
6 follows:

- 7 (a) Chase will contribute \$5.5 million for the benefit of the settlement  
8 class (Exhibit (Exh.) 1, Settlement Agreement, §4.1.);
- 9 (b) All class members for whom the settlement administrator is able to  
10 determine a valid address shall receive a direct payment. (Exh. 1,  
11 §§ 4.4-4.6.) These class members need not make a claim or do  
12 anything in order to receive payment. Based on confirmatory  
13 discovery, there are approximately 437,918 class members who are  
14 eligible to receive direct payments. (Pomerance Decl., ¶ 13.) The  
15 discovery has also disclosed that this group incurred an average  
16 finance charge of approximately \$40.33. (Pomerance Decl., ¶ 14.)  
17 The direct payments to class members should be approximately \$10  
18 each. (Pomerance Decl., ¶ 15.) Thus, this group is receiving back  
19 approximately 25% of what they allege to be their damages  
20 (Pomerance Decl., ¶ 16.);
- 21 (c) Chase has agreed, subject to this Court's approval, to pay service  
22 awards to class representatives Gary Davis and Gene Castillo in  
23 amounts not to exceed \$5,000 each, to compensate them for their  
24 time and effort in prosecuting this case (Exh. 1, §5.1.);
- 25 (d) Chase has also agreed, subject to court approval, not to oppose Class  
26 Counsel's fee request up to \$1.5 million – *which represents 27% of*  
27 *the \$5.5 million common fund.* (Exh. 1, §5.1.) A fee of 25% is the  
28 benchmark in the Ninth Circuit, and the attorneys' fees were

1 negotiated separately from and after the parties reached their  
2 agreement on the benefits going to the Class (Pomerance Decl., ¶  
3 17.);

- 4 (e) Costs of notice and administration are to be paid by the Class, to be  
5 deducted from the settlement fund. (Exh. 1, §§4.2, 4.4).

6 **IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY**  
7 **APPROVAL**

8 As a matter of public policy, settlement is a strongly favored method for  
9 resolving disputes. *See Util. Reform Project v. Bonneville Power Admin.*, 869  
10 F.2d 437, 443 (9th Cir. 1989). This is especially true in complex class actions  
11 such as this one. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625  
12 (9th Cir. 1982).

13 **A. Standards for Preliminary Approval**

14 Federal Rule of Civil Procedure 23(e) requires judicial approval for the  
15 compromise of claims brought on a class basis. At the final approval hearing, the  
16 Court will have before it extensive papers submitted in support of the proposed  
17 settlement. The Court will be asked to make a determination whether the  
18 settlement is fair, reasonable and adequate under the circumstances. At this  
19 juncture, however, Plaintiffs request only that the Court grant preliminary  
20 approval of the settlement.

21 In determining whether preliminary approval is warranted, the sole issue  
22 before the Court is whether the proposed settlement is within the range of what  
23 might be found fair, reasonable, and adequate, so that notice of the proposed  
24 settlement should be given to Class members and a hearing scheduled to consider  
25 final settlement approval. *See Manual for Complex Litigation* §13.14, at 173 (4th  
26 ed. 2004) (“First, the [court] reviews the proposal preliminarily to determine  
27 whether it is sufficient to warrant public notice and a hearing. If so, the final  
28 decision on approval is made after the hearing.”)

1 To grant preliminary approval, the Court need only conclude settlement of  
2 the claims against Defendant on the agreed-upon terms is within the range of  
3 possible approval for the purposes of providing notice and holding a future  
4 fairness hearing.

5 **B. The Proposed Settlement Merits Preliminary Approval**

6 The factors that courts consider in granting final approval of class action  
7 settlements lend support to the settling parties' belief that the proposed settlement  
8 is within the range of possible approval. In *Officers for Justice*, the Ninth Circuit  
9 set forth the factors the trial court should consider in assessing whether a proposed  
10 settlement is fair, reasonable, and adequate.

11 Although Rule 23(e) is silent respecting the standard by which  
12 a proposed settlement is to be evaluated, the universally  
13 applied standard is whether the settlement is fundamentally  
14 fair, adequate, and reasonable. The district court's ultimate  
15 determination will necessarily involve a balancing of several  
16 factors which may include, among others, some or all of the  
17 following: the strength of plaintiffs' case; the risk, expense,  
18 complexity, and likely duration of further litigation; the risk of  
19 maintaining class action status throughout the trial, the amount  
20 offered in settlement; the extent of discovery completed, and  
21 the stage of the proceedings; the experience and views of  
22 counsel; the presence of a governmental participant; and the  
23 reaction of the class members to the proposed settlement.

24 *Id.* at 625 (citations omitted). *Accord Torrasi v. Tucson Elec. Power Co.*, 8  
25 F.3d 1370, 1375 (9th Cir. 1993); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026  
26 (9th Cir. 1998).

27 ///

28 ///

1                   **1. Plaintiffs Have Engaged In Sufficient Discovery and**  
2                   **Investigation to Properly Evaluate the Propriety of**  
3                   **Settlement**

4           As a result of extensive negotiations and discovery, counsel have been able  
5 to fairly and properly evaluate the risks of litigation and the propriety of this  
6 settlement. In addition to formal discovery over the course of several years, Class  
7 Counsel also conducted a thorough investigation and analysis of data that was  
8 voluntarily supplied under oath by Chase's authorized representative. The  
9 information Class Counsel received from Chase through both formal and informal  
10 discovery was detailed, thorough, and directly responsive to Class Counsel's  
11 inquiries. (Pomerance Decl., ¶¶ 18-20.)

12           After analyzing the discovery, Class Counsel persisted in asking follow up  
13 questions which Chase answered. In addition to carefully studying the  
14 information obtained through formal and informal confirmatory discovery, Class  
15 Counsel have also carefully evaluated the legal issues, including the Court's  
16 denial of the Motion for Class Certification, the potential that the Court may grant  
17 Chase's motion to dismiss, and the likelihood of prevailing on the merits.  
18 (Pomerance Decl., ¶ 21.)

19           Class Counsel therefore believes that they have sufficiently analyzed both  
20 the liability and damages information necessary to properly evaluate the propriety  
21 of the settlement. Based on this analysis, and the current status of the case, Class  
22 Counsel have determined that a settlement of \$5.5 million is in the best interest of  
23 the Class. (Pomerance Decl., ¶ 22.)

24                   **2. The Strength of Plaintiffs' Case, When Balanced Against**  
25                   **the Risk, Expense and Duration of Further Litigation,**  
26                   **Supports Approval of This Settlement**

27           This settlement is well within the range of possible approval. The Court  
28 has denied the Motion for Class Certification. In most cases that would be it.

1 Any potential settlement on behalf of a class would be highly improbable.  
2 Despite this, efforts were made to bring in another class representative. While  
3 these efforts were underway, Chase moved to dismiss the case on the grounds that  
4 the case is now moot. Accordingly, it is entirely possible that the Court may grant  
5 Chase's motion to dismiss. In that event, the class would get nothing.

6 In addition, even if the Court were to deny Chase's motion to dismiss,  
7 several obstacles remain to the Class prevailing on the merits at trial. A  
8 substantial risk will remain that the Class will be unable to obtain certification.  
9 For example, Chase has argued and will undoubtedly continue to argue that the  
10 circumstances surrounding each particular transaction, including the possible  
11 violation of the terms of the cardmember agreement by cardholders, will result in  
12 individualized issues.

13 Finally, even if the Class was able to achieve certification, it is far from  
14 certain whether the Class would prevail on the merits. Chase has vigorously  
15 disputed Plaintiffs' claims on the merits. Chase contends that its cardmember  
16 agreement and other materials expressly allowed it to allocate payments to lower-  
17 interest balances before higher-interest balances. And, just getting to a trial on the  
18 merits could take up to several years more, on top of the eight years that the case  
19 has thus far proceeded. The proposed settlement eliminates the risks associated  
20 with continuing litigation, including possible outright dismissal, as well as the  
21 substantial risk of no recovery after several more years of litigation.

22 The immediacy and certainty of recovery is a factor for the court to balance  
23 in determining whether the proposed settlement is fair, adequate and reasonable.  
24 *See In Re Mego Financial Corporation Securities Litigation*, 213 F.3d 454, 458  
25 (9th Cir. 2000). Hence, the present settlement must be balanced against the  
26 expense, risk and delay of achieving a more favorable result at trial.

27 Approval of the settlement means a present, tangible and significant  
28 recovery for the Class. The benefits are all cash – no coupons whatsoever.

1 Individuals were billed on average approximately \$40.33 in improper finance  
2 charges, and most of the class members (if settlement is approved) will receive  
3 approximately \$10, without needing to file a claim form or dig up records, which  
4 in some cases may be a decade old. The class members, of which there are  
5 approximately 437,918, will be receiving 25% of their total claimed damages on a  
6 completely risk free basis, without any further delay, and without further risk of  
7 dismissal of the entire case.

8 Absent the settlement, the case will proceed with a hearing on Chase's  
9 motion to dismiss, Plaintiff Gary Davis' motion for leave to amend, and Gene  
10 Castillo's motion to intervene. Additional discovery will proceed, if allowed by  
11 the Court, and yet another motion for class certification will take place. If that is  
12 granted, more rounds of motions to dismiss and for summary judgment are  
13 expected. While Class Counsel believes they have well-founded arguments in  
14 support of Plaintiffs' claims, there is no question that settlement at this time  
15 ensures an immediate and substantial recovery for settlement class members with  
16 no further risk whatsoever.

17 **3. The Recommendations of Experienced Counsel Favor the**  
18 **Approval of Settlement**

19 Plaintiffs' counsel have concluded that the settlement is fair, reasonable,  
20 and adequate after carefully considering and evaluating, among other things, the  
21 relevant legal authorities and the substantial data and information provided by  
22 Chase, as well as evaluating the likelihood of prevailing on the merits, the risks,  
23 expense and duration of continued litigation, and the likely appeals and  
24 subsequent proceedings necessary if Plaintiffs did prevail against Chase at trial.  
25 There is no question the settlement is in the best interest of the Class.

26 Due to counsels' extensive efforts over an eight year period on the Class'  
27 behalf and the settlement achieved, Plaintiffs' counsel have provided fair and  
28 adequate representation to the Class. Plaintiffs' counsel have significant



1 experience in complex class action litigation and have negotiated numerous other  
2 substantial class action settlements throughout the country. Where, as here, the  
3 settlement is the product of serious, informed, non-collusive negotiations,  
4 significant weight should be attributed to the belief of experienced Class Counsel  
5 that settlement is in the best interest of the Class. *See National Rural*  
6 *Telecommunications Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.  
7 Cal. 2004) (finding that “‘great weight’ is accorded to the recommendation of  
8 counsel, who are most closely acquainted with the facts of the underlying  
9 litigation.”); *In Re Washington Public Power Supply Systems Securities Litigation*,  
10 720 F. Supp. 1379, 1392 (D. Ariz. 1989), *aff’d sub nom.*, *Class Plaintiffs v. City of*  
11 *Seattle* 955 F.2d 1268, 1296 (9th Cir. 1992).

12 The proposed settlement satisfies the preliminary approval standard. Notice  
13 of a fairness hearing should issue forthwith to the settlement Class.

14 **V. CERTIFICATION OF THE SETTLEMENT CLASS IS PROPER**

15 The parties have stipulated to class certification for settlement purposes  
16 only. (Exh. 1, §3.1.) The Supreme Court has expressly approved the use of a  
17 settlement class. *See Amchem Products v. Windsor*, 521 U.S. 591, 620 (1997).  
18 Plaintiffs request that the court enter an order conditionally certifying a class for  
19 settlement purposes, defined as follows:

20 All Chase Circuit City Rewards Credit Cardmembers with  
21 California billing addresses who, between May 26, 2004 and  
22 the entry of preliminary approval of this Settlement (inclusive),  
23 made a promotional or deferred-interest purchase at Circuit  
24 City and who, as a result of payments or credits being allocated  
25 to a regular purchase balance after the promotional or deferred-  
26 interest balance, paid more in finance charges than they would  
27 have paid if the payments or credits had first been applied to  
28 the regular purchase balance.

1 The agreed upon settlement class satisfies all requirements of Federal Rule  
2 of Civil Procedure 23(a) and (b)(3).

3 **A. The Settlement Class Is So Numerous That Joinder of All**  
4 **Settlement Class Members Is Impracticable**

5 Rule 23(a)(1) requires the Class be so numerous that joinder of all class  
6 members is “impracticable.” That phrase does not require that joinder be  
7 impossible, only that it would be difficult or inconvenient to join all class  
8 members. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th  
9 Cir. 1964). There is no fixed number of class members that either compels or  
10 precludes class certification. *Arnold v. United Artists Theater Circuit, Inc.*, 158  
11 F.R.D. 439, 448 (N.D. Cal. 1994).

12 Here, there is no question that Plaintiffs proposed settlement class satisfies  
13 the numerosity requirement. Confirmatory discovery has revealed that there are  
14 approximately 437,918 class members, and obviously joinder would be highly  
15 impracticable.

16 **B. Common Questions of Law and Fact**

17 Federal Rule of Civil Procedure 23(a)(2) requires that there be questions of  
18 law or fact common to the Class. A common nucleus of operative facts suffices to  
19 satisfy the commonality requirement. *See Moore v. Fitness Intern., LLC*, 2013  
20 WL 3189080, 5 (S.D. Cal. 2013); *Hanlon*, 150 F.3d at 1019-1020. Rule 23’s  
21 “commonality” requirement is not particularly rigorous. Indeed “one significant  
22 issue common to the Class may be sufficient to warrant certification . . . the  
23 necessary showing to satisfy commonality is minimal.” *Blackwell v. Sky West*  
24 *Airlines*, 245 F.R.D. 453, 460 (S.D. Cal. 2007).

25 In this case, there are numerous questions of fact and law that would satisfy  
26 Rule 23(a)(2). This action would require the Court to address the following  
27 questions that undoubtedly affect all class members:

- 28 1. Whether Chase’s payment allocation policy breached the terms of

1 the cardmember contract when Chase gave priority of payment to  
2 promotional items that were not yet due or owing;

- 3 2. Whether Chase's allocation of payments violates the Unfair  
4 Competition Law because it is contrary to the advertisements used  
5 to promote the promotional purchases;
- 6 3. Whether Chase's allocation of payments violates the Unfair  
7 Competition Law because it is contrary to the cardmember  
8 contract;
- 9 4. Whether Chase's payment allocation policy was applied in a  
10 uniform and consistent manner to the Class as a whole.

11 Underlying these basic common questions is a common nucleus of  
12 operative facts pertaining to Chase's marketing of its Circuit City Rewards Card  
13 promotional purchases, and how it allocated its customers' payments on the card.  
14 Thus, the settlement class satisfies the commonality requirement of Federal Rule  
15 of Civil Procedure 23(a).

16 **C. Plaintiffs' Claims Are Typical of Those of the Settlement Class**

17 "Representative claims are typical if they are reasonably co-extensive with  
18 those of absent class members; the need not be substantially identical." *Hanlon*,  
19 150 F.3d at 1020; *accord Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).  
20 Rule 23(a)(3) requires only that there be no express conflict between the  
21 representative parties and the Class over the very issue in litigation and that the  
22 representative's interests are not antagonistic to those of the Class. *Stolz v. United*  
23 *Brotherhood of Carpenters and Joiners, et al.*, 620 F.Supp. 396, 404 (D. Nev.  
24 1985).

25 While this Court recently determined that Plaintiff Gary Davis could not  
26 represent the Class if the Class were to be certified in a ruling by the Court, Chase  
27 has stipulated and agreed, for purposes of certifying a settlement class, to Gary  
28 Davis and Gene Castillo serving as the class representative Plaintiffs, and to their

1 adequacy to serve in that capacity. (Exh. 1, § 3.1.) The typicality requirement is  
2 satisfied here through Plaintiffs serving as class representatives because they and  
3 the settlement class members alleged the same set of operative facts. They and  
4 every putative class member made a promotional or deferred-interest purchase at  
5 Circuit City and had their payments or credits allocated to a regular purchase  
6 balance after the promotional or deferred-interest balance, which resulted in more  
7 finance charges than they would have paid if the payments or credits had first  
8 been applied to the regular purchase balance. There is no dispute that the class  
9 representatives fall directly within these allegations, and thus satisfy the typicality  
10 requirement.

11 **D. The Adequacy Requirement Is Satisfied**

12 Rule 23(a)(4) requires “the representative parties will fairly and adequately  
13 protect the interests of the class.” Courts have established a two-prong test for  
14 this requirement. *See, e.g., In re Apple iPod iTunes Antitrust Litigation*, 2008 WL  
15 5574487, 6 (N.D. Cal. 2008) (citing *Hanlon*, 150 F.3d at 1020); *Schaefer v.*  
16 *Overland Express Family of Funds*, 169 F.R.D. 124, 130 (S.D. Cal. 1996). First,  
17 counsel for the class representatives must be competent to undertake the particular  
18 litigation at hand. Second, there can be no antagonism or disabling conflict  
19 between the interests of the named class representative and the members of the  
20 class. *See Hanlon*, 150 F.3d at 1020.

21 Plaintiffs’ claims do not conflict with the Settlement Class’ claims.  
22 Plaintiffs have vigorously pursued common claims on behalf of themselves and all  
23 Class members. All of Plaintiffs’ claims are directed at resolving the issues raised  
24 by Chase’s allocation of payments to promotional and non-promotional purchases,  
25 an issue common to all Class members. Plaintiffs’ vigorous pursuit of this  
26 litigation confirms their strong interest in achieving a successful result for the  
27 Class. Further, Plaintiffs retained attorneys with extensive experience in the area  
28 of consumer class action litigation who have successfully prosecuted numerous

1 class actions and other complex litigation on behalf of injured consumers in this  
2 District and across the country. There can be no legitimate dispute that Plaintiffs'  
3 Counsel have vigorously and skillfully prosecuted this Litigation, securing a  
4 settlement that is in the Class' best interests. In addition, Chase has stipulated and  
5 agreed, for purposes of certifying a settlement class, that Plaintiffs are adequate  
6 class representatives.

7 The second requirement also is satisfied here. There is no antagonism  
8 between the proposed representatives and the absent Settlement Class members.  
9 All claims arise from the same set of operative facts and course of conduct, and  
10 both Plaintiff and absent Settlement Class members share the common goal of  
11 maximizing recovery. *Lubin v. Sybedon Corp.*, 688 F.Supp. 1425, 1461 (S.D.  
12 Cal. 1988).

13 **E. The Proposed Settlement Class Satisfies Rule 23(b)(3)**

14 In addition to meeting the prerequisites of Rule 23(a), the present action  
15 satisfies the requirements of Rule 23(b)(3), which mandates that common  
16 questions of law or fact predominate over individual questions and that a class  
17 action is superior to other available methods of adjudication. *See Hernandez v.*  
18 *Alexander*, 152 F.R.D. 192, 193-94 (D. Nev. 1993). Here, common questions of  
19 law and fact predominate, and a class action is the superior, if not the only,  
20 method available to fairly and efficiently litigate these claims.

21 **1. Common Questions of Law and Fact Predominate**

22 Where a complaint alleges a common course of misrepresentations,  
23 omissions and other wrongdoings that affect all members of the class in the same  
24 manner, common questions predominate. *Blackie v. Barrack*, 524 F.2d 891,  
25 905-8 (9th Cir. 1975). The Court's inquiry should be directed primarily toward  
26 the issue of liability. *Id.* at 902.

27 There are a host of common questions of law and fact, which Plaintiffs seek  
28 to certify. As discussed above, Plaintiffs seek certification for causes of action

1 arising under the Unfair Competition Law, and basic contract law. Three factual  
2 issues bear on these claims: (i) Chase's application of the terms of its cardmember  
3 agreement with respect to the allocation of payments when a cardholder made  
4 promotional and non-promotional purchases; (ii) Chase's assessment of finance  
5 charges based on its allocation of payments; and (iii) whether Chase's actions  
6 violated the terms of its contract and were contrary to its advertisements. These  
7 common factual issues predominate over any purported individual factual issues.

8           **2.     A Class Action Is Superior to Other Available Methods for**  
9           **Resolving this Controversy**

10           Rule 23(b)(3) also requires the Court to determine that "a class action is  
11 superior to other available methods for fairly and efficiently adjudicating the  
12 controversy." A class action is superior where "classwide litigation of common  
13 issues will reduce litigation costs and promote greater efficiency." *Valentino v.*  
14 *Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996).

15           The class action vehicle is the superior method for adjudicating relatively  
16 low-value consumer claims. *See, e.g., Miletak v. Allstate Ins. Co.* 2010 WL  
17 809579, 13 (N.D.Cal. 2010) ("a class action is superior when it is the only realistic  
18 form of adjudication available") (citing *Valentino*, 97 F.3d at 1234-35). Where  
19 "each member's claim is likely too small to be worth pursuing in an individual  
20 action . . . a class action may be the only method for providing meaningful  
21 recovery." *Miletak* 2010 WL 809579 at 13; *see also Lowden v. T-Mobile USA,*  
22 *Inc.* 512 F.3d 1213, 1218 (9th Cir. 2008) ("when consumer claims are small but  
23 numerous, a class-based remedy is the only effective method to vindicate the  
24 public's rights").

25           Here, Plaintiffs present class-wide allegations premised on common  
26 evidence. Trying each Class claim separately would be inefficient, when each of  
27 thousands of cases would allege identical misconduct and offer identical proof of  
28 Chase's liability. *See In re Juniper Networks, Inc. Securities Litigation*, 264

1 F.R.D. 584, 592 (N.D. Cal. 2009); *Mejdreck v. Lockformer Co.*, 2002 WL  
2 1838141, 7 (N.D. Ill. 2002). Most of those injured have not been damaged to a  
3 degree where it would be cost-effective for them to seek recovery on their own.  
4 Further, without the class settlement device, Defendant could not obtain a class-  
5 wide release, and therefore would have little, if any, incentive to enter into the  
6 settlement. Certification of the Class for settlement purposes will enable  
7 Plaintiffs' Counsel to handle the administration of the settlement in an organized  
8 and efficient manner. Resolution of Plaintiffs' and the Settlement Class' claims  
9 against Defendant through the proposed Class is superior to any other available  
10 method of resolution. Accordingly, certification of the Class is appropriate.

#### 11 **VI. THE PROPOSED NOTICE IS ADEQUATE**

12 Federal Rule of Civil Procedure 23(c)(2)(B) provides, "[f]or any class  
13 certified under Rule 23(b)(3), the court must direct to class members the best  
14 notice that is practicable under the circumstances, including individual notice to  
15 all members who can be identified through reasonable effort." Rule 23(e)(1) says,  
16 "[t]he court must direct notice in a reasonable manner to all class members who  
17 would be bound by the proposal."

18 Where notice is being sent in connection with a proposed settlement, the  
19 notice must inform class members about the settlement's terms and their options  
20 with respect thereto. *See Torrissi*, 8 F.3d at 1374 (9th Cir. 1993).

21 The notice to a Rule 23(b)(3) class must concisely and clearly state in plain,  
22 easily understood language:

- 23 • the nature of the action,
- 24 • the definition of the class certified,
- 25 • the class claims, issues, or defenses,
- 26 • that a class member may enter an appearance through counsel if the
- 27 member so desires,
- 28 • that the court will exclude from the class any member who requests

1 exclusion, stating when and how members may elect to be excluded,  
2 and

- 3 • the binding effect of a class judgment on class members under Rule  
4 23(c)(3).

5 In accordance with Rule 23, the Parties have negotiated a Full Notice of  
6 Settlement and a Postcard Notice (the “Notices”) to be disseminated to the  
7 Settlement Class. The Postcard Notice and the Full Notice are attached to the  
8 Pomerance Declaration as Exhibits 2 and 3, respectively. The Postcard Notice  
9 will be sent by U.S. mail to all Settlement Class members who can be identified  
10 with reasonable effort through Chase’s records to inform them about the  
11 settlement’s terms, their rights in connection with the settlement, and the date of  
12 the Final Fairness Hearing, at which time the Court will consider final approval of  
13 the settlement and attorneys’ fees and expenses. The Postcard Notice will provide  
14 a link to the Settlement Website for class members to obtain the Full Notice of  
15 Settlement.

16 The Full Notice will be available on the website described in the postcard  
17 notice as well as being made available via mail from the administrator to those  
18 who call in and request the full notice. *See Manual for Complex Litigation 4<sup>th</sup>* at  
19 §21.311 (“many courts include the Internet as a component of class certification  
20 and class settlement notice programs.”). The Full Notice describes in simple  
21 language the nature, history and status of the Litigation, sets forth the Class  
22 definition, states the Class claims and issues, discloses the right of people who fall  
23 within the Class definition to exclude themselves from it, as well as the deadline  
24 and procedure for doing so and warns of the binding effect of the settlement  
25 approval proceedings on people who stay in the Class.

26 In addition, the Full Notice describes the Settlement and sets forth the  
27 benefits Plaintiffs propose to distribute among the Class, sets out the amount of  
28 attorneys’ fees and expenses that Plaintiffs’ Counsel intend to seek in connection



1 with final settlement approval, including the amount of the requested fees and  
2 expenses, provides contact information for Counsel, and summarizes the reasons  
3 the Parties are proposing the settlement. The Full Notice discloses the date, time  
4 and place of the formal fairness hearing, and the procedures for commenting on  
5 the settlement and appearing at the hearing. The contents of the Full Notice  
6 therefore satisfy all applicable requirements.

7 Plaintiffs believe notice via U.S. mail is the best notice practicable under  
8 the circumstances, exceeds the notice given in other consumer class actions, and  
9 exceeds due process requirements. *See generally Torrasi*, 8 F.3d at 1374; *In re*  
10 *Domestic Air Transp. Antritrust Litig.*, 141 F.R.D. 534, 548-53 (N.D. Ga. 1992)  
11 (holding that under certain circumstances notice by publication only satisfies due  
12 process requirements). In addition, the Full Notice will be posted on the Claims  
13 Administrator's website. *See Farinella v. PayPal, Inc.*, 611 F. Supp.2d 250, 256  
14 (E.D.N.Y. 2009) (approving "multifaceted notice program" that included website  
15 notice).

16 Notice of this Settlement also shall be provided to state and federal officials  
17 in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C.  
18 §1715(a) and (b), which requires appropriate state and federal officials to be  
19 provided with the Complaint (or information on how to access it), the Settlement  
20 Agreement and Class notices, and information on the Class' composition.  
21 Accordingly, in granting preliminary settlement approval, the Court should also  
22 approve the Parties' proposed form and method of giving notice to the Class.

## 23 **VII. SCHEDULE OF EVENTS**

24 In connection with the settlement's preliminary approval, the Court must set  
25 a final approval hearing date, dates for mailing the Postcard Notice and deadlines  
26 for objecting to the settlement, opting out of the Class, and filing papers in support  
27 of the Settlement. If the Court enters the Notice Order at the hearing on Plaintiffs'  
28 Motion for Preliminary Approval of Class Action Settlement, Plaintiffs propose

the following schedule:<sup>1</sup>

Last day to mail postcard notice to Class	July 3, 2014
Last day for Settlement Class members to opt-out of settlement	August 18, 2014
Last day for Settlement Class members to object to settlement	August 18, 2014
Date by which to file papers in support of settlement, and request for attorneys' fees and expenses	July 28, 2014
Final Approval Hearing	September 22, 2014 at 10:00 a.m.

#### **VIII. CONCLUSION**

This Settlement is the result of an eight year litigation odyssey involving extensive investigation, analysis and discovery, multiple and complex motion work, three formal mediation sessions, and hard fought negotiations by experienced arm's length counsel. The Settlement provides real, tangible and immediate relief to consumers without any further costs or delay. For the reasons

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<sup>1</sup> These dates have been proposed in anticipation of the instant unopposed motion being heard on an expedited basis on May 5, 2014. The parties have concurrently filed a Stipulation and Proposed Order to set the hearing on that date, per the Court's prior tentative approval of the hearing being set on an expedited basis. The suggested dates are therefore subject to change if the instant motion is heard after May 5, 2014.

1 set forth above, the proposed settlement warrants the Court's preliminary  
2 approval.

3  
4  
5 DATED: April 23, 2014

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12 of all others similarly situated

13 DATED: April 23, 2014

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21 DATED: April 23, 2014

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22 By: s/ Nicole Duckett Fricke

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